United States Court of Appeals

for the Second Circuit



APPELLEE'S APPENDIX

Docket No. 76-1449

In The

United States Court of Appeals

For the Second Circuit

B

UNITED STATES OF AMERICA,

Appellee,

— *v.* —

CHARLES P. GREZO; JOSEPH T. D'AGOSTINO; SAMUEL L. EBARE; RICHARD MICHAEL BEACH,

Defendants-Appellants.

On Appeal from the United States District Court
Northern District of New York

APPENDIX FOR APPELLEE, United States of America
(Vol. II — Page A361 to A742)



PAUL V. FRENCH
United States Attorney
Northern District of New York
Attorney for the United States of America

JEFFREY C. FISHER
Department of Justice Attorney

U.S. Department of Justice
Room 921 Genesee Building
1 West Genesee Street
Buffalo, New York 14202
716-842-3285

Daily Record Corporation
Rochester, New York

(9036)

Spaulding Law Printing
Syracuse, New York

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Page

Excerpts of Transcript of Trial Proceedings:

Opening Statements:

- By the Government A20
- For Defendant Ebare A28
- For Defendant D'Agostino A31
- For Defendant Beach A33
- For Defendant Grezo A37
- For Defendant Camerano A41
- For Defendant Czerwinski A43

Witnesses for the Government:

- Monica Simms Deakin A46
- James Colloca A62
- Lawrence J. Eppolito A134
- James D. Keller A154
- James R. Supan A165
- James A. Aaby A209
- William A. Scobie A221
- James D. Keller (recalled) A234
- Sam Viconti A263
- Kevin O'Brien A283
- Phillip J. Looney A294
- Leon Cook A307
- Stipulation Read A324
- Playing of Tapes A334
- William L. Holmes A339

Summations:

- By the Government A523
- For Defendant D'Agostino A569
- For Defendant Grezo A584
- For Defendant Camerano A619
- For Defendant Beach A627
- For Defendant Czerwinski A645
- For Defendant Ebare A656
- Rebuttal by the Government A692

Charge of the Court A703

Page

Government's Exhibit 3 — Transcript of Composite Tapes:

D'Agostino conversations of 1-4-75 at (315) 455-7153 ..... A743

D'Agostino-Beach conversations of 12-23-74 through 1-12-75 at (315) 455-7153 ..... A849

D'Agostino-Camerano conversations of 1-4-75 through 1-12-75 at (315) 455-7153 ..... A862

D'Agostino-Frannie conversations of 12-23-74 and 12-26-74 at (315) 455-7153 ..... A867

D'Agostino-Grezo conversations of 12-21-74 through 1-13-75 at (315) 455-7153 ..... A870

D'Agostino-Czerwinski conversations of 12-21-74 through 1-12-75 at (315) 455-7153 ..... A952

Ebare related calls at (315) 479-7010 ..... A1012

Government's Exhibit 17 — Summary Computation of Wagering Action at (315) 455-7153 ..... A1023

Government's Exhibit 4 — Tape A1024

Q Could you describe those by name, or in some fashion that we would know?

A I am not positive, no, sir.

Q Do you have any judgment or recollection as to any of them?

A If I do not know the name, I would rather not say.

Q Well, could you tell us anything as to the number of such lines there would be in addition to this so-called Bob Martin line?

A I think there is probably three that I know of.

Q Three. All right. Now, did I understand correctly from your testimony that this so-called Bob Martin line is published in some fashion at Churchill-Downs?

A It is posted in Churchill-Downs.

Q Posted. And Churchill-Downs, again, is what?

A That is a book in Las Vegas, a booking parlor. They accept wagers on sporting events, horses.

Q I see. Now, in connection with lines, the lines that might be available on a given day might differ, wouldn't that be correct?

A Yes, they might.

Q And you indicated that the purpose of a line is to add points to the underdog in the contest, or to take points from the favorite in order to more evenly match the teams. Is that substantially what a line is?

A That's correct.

Q And does a line then represent somebody's opinion with reference to the ability of the two competing teams?

A Yes, it does.

Q And now, I think you indicated that the Martin line was changed from time to time. During the course of a day do you mean?

A Yes.

Q And that would result from what, from betting?

A As I stated before, he makes up the line, submits it to the knowledgeable bettors, and when they bet with him, he then adjusts the line to reflect a more evenly matched contest, and then he disseminates that line.

Q Now, could you tell us in what manner he would adjust the line? Would you describe that to us a little more?

A If he found that these people that he submitted that line to had wagered on one team more than another, he would adjust it to make it more attractive to attract betting on the other side.

THE COURT: Could you give us an example?

THE WITNESS: Well, if it is Los Angeles and SanFrancisco, he submits the line to his knowledgeable bettors, and they come back, and all of them place wagers on Los Angeles.

THE COURT: Give us an example. Give us

the numbers. Suppose he said Los Angeles 5?

THE WITNESS: The numbers wouldn't really matter. It is the amount of money that is wagered on either side of the game. This is the way it is determined whether or not the line is in balance.

THE COURT: We are trying to find out what he does to the line.

THE WITNESS: He willeither --

THE COURT: Suppose he said Los Angeles 5. When and why and how did he adjust it?

THE WITNESS: Well, if he has got more money on Los Angeles, he will raise the line to attract betting on the opposite side, give the underdog more points.

BY MR. SHANAHAN:

Q Well, in your illustration, which one would be the underdog, Los Angeles or SanFrancisco, whatever?

A Well, whatever had the most wagers on one side. As I say, it is not the question of which team is which. It is the amount of money that is wagered on either one of the teams in the contest which determines whether he is going to adjust the line or not.

Q I see.

A It is the amount of money taken in.

Q And when you say adjusted, you would mean that he would

change the point spread?

A Correct.

Q Would that be the idea?

A Yes.

Q And he would modify the point spread in such a way that would make betting on the other team, the one that had not been bet very much, to make betting on that more attractive, is that what you are telling us, Mr. Holmes?

A That's correct.

Q All right. Now, as a result of adjusting his line, that ends up with a change in the line itself, does it not?

A Well, at that point it hadn't been put out for publication or public use. It is still within his control. After that is when it is posted in Churchill-Downs.

Q Well, then, let's go back now. I will just see if I can fully understand it.

This Mr. Martin proposes a line, and then he tests that out with these selected bettors that you have explained; would that be right?

A Yes.

Q And he finds out how the betting goes which may cause him to adjust or change his original thinking as to that line?

A That's correct.

Q Now, after he has had the opportunity to test out his original line and perhaps adjust it, if it is indicated

it should be adjusted, it would be the result of that testing, that adjustment that would come his final line, would that be it?

A Yes.

Q All right. Now, just let me ask you one more thing: is that Martin line, from time to time, changed during the course of a day?

A Maybe, yes.

Q And then, do you know as to whether it customarily is or is not?

A It does change, sometimes it does. The reason that -- I mean, it is changed, and the reason that bookmakers use it is because it is current, because of the changes that might occur.

This line reflects anything that might happen to cause that line to change, such as injuries or --

Q Are there certain set times of the day when a change could be looked for on the Martin line?

A I don't know.

Q You have indicated, for instance, on say a football game or basketball game where some star player was injured, and that information came to Mr. Martin or whoever is in charge of putting on his line, and that might affect the point spread?

A It might, yes.

Q And the line would then be adjusted to compensate for the loss of a valuable player?

A Yes, it could.

Q To again even the teams, that would be the point, would that be so.

A Yes.

Q And the whole purpose of the point spread is to evenly match the teams, is that right?

A That's correct.

Q And the whole point of the line and the whole point of a point spread is to enable the people to bet on the result of some such contest, isn't that right?

A That's correct.

Q There would be no reason to give a line or point spread unless it was to be acted upon by someone betting on it?

A That's correct.

Q All right. Now, you have indicated to us that there are lines other than the Las Vegas line that are available to people who desire to bet?

A Yes.

Q And I think that you indicated this Jimmy The Greek whose line is posted in some newspapers. That is an example of such a line, would that be so?

A That's correct.

Q Now, you haveindicated to us the difference in Jimmy The

Greek's line is that he doesn't invite anyone to bet against him on his line.

A That's correct.

Q He simply gives his opinion?

A Yes.

Q All right. Are there other lines similar to the Martin line where the line is tested out and adjusted as a result of betting as you have indicated to us the Martin line was?

A I don't know.

Q You haven't any information on that at all?

A No, I don't.

Q Are there other locations where lines are available? For instance, would it be possible to get a line if you knew where to get it in New York City?

A Well, most likely it would be the Martin line that was phoned in to New York City and they would have a source there that would distribute it.

Q You have indicated, or at least I thought you did, that there were some three or four other lines that you were familiar with?

A I mentioned that there were about three lines, yes.

Q I take it you wouldn't mean, as I suggested, New York City because you say that might well be the Martin line?

A That's correct.

Q Well, there are other lines, other than the Martin line

then?

A In Las Vegas, yes.

Q Do all of these lines originate in Las Vegas, Mr. Holmes?

A I have no knowledge of that.

Q Well, do you have any knowledge of any of them originating anywhere else?

A No, sir, I don't.

Q Have you ever had any information that has come to your attention that would indicate the source of a line somewhere other than Las Vegas?

A No, sir, I don't.

Q Do people engaged in gambling sometimes prepare their own line?

A They could conceivably do that, yes.

Q Have you ever had an experience where you have seen that that occurred as a result of evidence that may have been submitted to you?

A No, sir, I have not.

Q Did you see anything in that composite that would indicate that there was another line discussed, other than a Las Vegas line?

A In one of the conversations, I think it was D'Agostino who said he made up a line, but to be careful about it.

Q Do you recall any conversations where the caller, in discussing with D'Agostino, and whether or not D'Agostino's

line was available, whether that person mentioned another line?

A You mean comparing a line from another line source?

Q That he had received information of a line from some different source.

A Yes.

Q There were such calls?

A Yes.

Q Were you able to form an opinion as to what line that person was talking about?

A No, sir.

Q It, apparently, was not the Las Vegas line?

A It could have been modified.

Q And when you speak of the Las Vegas line that is modified, Mr. Holmes, would you explain that to us, please.

A They modify it to reflect the locale that the line's action is disseminated in, the feeling of people for the home team or weather conditions, or something like that.

Q I see. All right. Now, in connection with what you have told us here concerning the various individuals on trial -- first of all, it is true, is it not, that you have not heard the testimony of this trial?

A That is correct.

Q And what you said to us here as to the participation of

the defendants in this case is purely your opinion; would that be correct?

A That's correct.

Q And that opinion is based, as you have already told us, solely upon this composite transcript?

A Yes, sir.

Q Now, I notice that at some point or other you based some opinion you had upon some conversation between Czerwinski and D'Agostino concerning someone you called Jimmy Keller. Do you have that general subject in mind, Mr. Holmes?

A Yes, I do.

Q Did you ever talk to Keller?

A No, sir, I did not.

Q Did you hear him testify under oath in the courtroom here?

A No, I did not.

Q Well now, in connection with your testimony and the opinions you gave, I assume that you would agree that your opinions could be wrong, would you not?

A Yes, sir, it is possible.

MR. SHANAHAN: I think that's all.

CROSS-EXAMINATION (Cont'd)

BY MR. RINALDI:

Q Mr. Holmes, you stated that you received at the FBI laboratory in Washington some material for your analysis, is that correct?

A Yes, sir.

Q And what did you actually receive?

A Tape recordings, transcripts, physical evidence.

Q And did you receive any instructions with that?

A No, sir.

Q Well, do you remember how it came to you? Was there just a letter or a phone call or what? How did you receive it, how did you know what to do with what you received?

A A letter was sent with the package requesting us to analyze it for a gambling paraphernalia, or gambling material, determine if it was gambling material.

Q You don't happen to have that letter with you, do you?

A No, sir, I don't.

Q And I didn't quite hear when you actually received those. Mr. Shanahan brought that up, but I didn't hear.

A October 2nd, 1975.

Q Okay. And how much total time, in hours, did you yourself devote to reviewing just the transcript that you made reference to this morning or this afternoon?

A The composite transcript?

Q Yes, sir.

A Well, I have been here all week and I was here last Friday, and I have been reviewing it since then.

Q All right. Well, when you say you have been here for a week or so and you have been reviewing it, were you

reviewing the opinion you had already made prior to coming here?

A I was reviewing the transcript to formulate my analysis and my opinion on that transcript.

Q So would it be fair to say that from October until you got here, you didn't look at it?

A That's correct.

Q How much time did you spend, in hours, reviewing that when you arrived here?

A I have no idea.

Q Well, did you review it at all in Washington?

A No, sir, I did not.

Q All right. And did you also receive some basis for your opinion here today from some third persons working for the FBI in Washington?

A No, sir, I did not.

Q That is exclusively your opinion?

A That's correct.

Q I thought you mentioned that some other aides helped you along.

A They helped me to -- they assisted me in arranging the material and analyzing it. I formulated my own opinion as to what was said in the report.

Q Well, when you say they helped you analyze it, in their process did they give you what they thought about that

particular piece of material?

A They wrote down what was there, and I examined it. If I disagreed with it, I told them it was wrong.

Q But some of the things they did say, you perhaps incorporated it in the opinion you gave here today, did you not?

A They were my opinions.

Q But based upon data that you received from a third party?

A The evidence that we received in the lab was my opinions.

Q Right. If you were to receive a piece of paper sent to you by some other law enforcement agency and asked for a gambling analysis and it read as follows: "Florida 18, 4; Penn State 16, 11; Oklahoma 7, 5." What would that indicate to you?

A Could you repeat that?

Q Sure. Florida 18, 4; Penn State 16, 11; Oklahoma 7, 5.

A And that was all that was said?

Q Yes. If I mailed that to you and asked you to get -- with the same request that you received when you received this material.

A I would say that was in the format of wagers.

Q Well, explain them to me.

A Format of wagers that they give a team with the point spread and amount of money wagered.

Q You mean the 4 behind the 18 would be what?

A $400.

Q And the 11?

A $1100.

Q And f would be 500?

A That's correct.

Q All right. Now, you mentioned something about a split line. I think you told me that a split line was where, for example, you said Louisville 15-1/2, 16, a buck each. Is that what you made reference to in the split line?

A I meant by the split line that he had two different lines for the same team.

Q All right. And you indicated to me that that person was betting, he was a bettor?

A He was betting on both of those lines for the same team.

Q But that would indicate a bettor, would it not?

A Not necessarily.

Q It would not?

A No.

Q I thought you told me that -- told Mr. Fisher on direct examination that that was the case.

A I said that it was a bet.

Q All right. Maybe I misunderstood you, sir.

Now, when you reviewed the composite, Mr. Holmes, I think you stated an example as to Mr. Ebare. You stated that he was either an owner or manager?

A That's correct.

Q And you said he made policy decisions and settled disputes?

A And also financed the organization.

Q And financed the organization, all right. And in all the time that you spent reviewing that composite, how many instances did you find him settling disputes?

A The one major dispute.

Q How many others?

A That's the only one.

Q All right. And how many times did you find him making policy decisions?

A I believe once, I am not sure.

Q All right. And how many times in that composite did you findthat he was financing?

A There were references on two different occasions, and once in his conversation.

Q So then I take it then, based upon the one dispute that you claimed was settled there, based upon him making one policy decision, and based upon two incidents of financing, it was your opinion that he was an owner or manager of this gambling business?

A That's correct.

Q All right. How many times, Mr. Holmes, in reviewing that composite, have you found that Mike Beach occupied this position of trust because he received bottom figures?

A I believe on four different occasions.

Q Do you remember what pages those were?

A The instance where he receives the figures for both sides, the amount of money that was wagered on both teams in a single contest were on page 117, 118, 119, 107.

Q And this is your basis for saying that a person occupies a position of trust?

A Yes, sir.

Q Now, with respect to Mr. D'Agostino, how many times in that composite did Mr. D'Agostino settle disputes, whether they were minor or not, or major?

A He was the one that discussed it with Baldy or Czerwinski, trying to determine what method of -- or what they should do to try and collect the money from the delinquent account.

Q All right. Now, I think you have noticed in reading that and reviewing it, Mr. Holmes, that Mr. D'Agostino appears there a number of times?

A Yes, he does.

Q And on how many occasions did he make any policy decisions, what you refer to as policy decisions?

A I don't believe I specified he made policy decisions.

Q I'm sorry, I didn't hear.

A I don't believe I specified him as making policy decisions.

Q Well, when you reviewed this, didn't you review it with

a view to seeing whether or not he did?

A He relayed -- correction. He dispensed policy to the individuals, the bettors and writers, like setting wagering limits, office hours, collections.

Q Mr. Holmes, when you arrived in Syracuse, were you in fact, during that period of time, with Mr. Fisher?

A Yes, I was.

Q By any chance, did you have an occasion to see his file brief?

A No, sir, I did not.

Q Did you have discussions with him regarding this particular case?

A In regards to what?

Q Well, did you have any discussions?

A I have talked to him, yes.

Q Were there any discussions based upon what he felt the Government's case was?

A No, sir.

Q Did he ever discuss with you as to the role that each defendant played?

A He asked me what my opinion would be, yes.

Q Prior to that?

A No, sir.

Q All right. And just one more question: I think you stated that there were some other persons on the tape who

you felt were the writers, and let me take one at random. I think you said BB-60.

A That's correct.

Q All right. And what is a writer?

A As I stated before, a writer is an individual who accepts wagers from bettors on the behalf of a gambling organization in the furtherance of their business.

Q Would a bettor receive a line before making any bets?

A Yes, he would.

Q Would a bettor also -- withdrawn. Let me ask it this way: would a writer who is writing bets, say, for a bookmaker, ordinarily convey a number of bets?

A He could, yes.

Q Let me ask you this, Mr. Holmes:

"D'Agostino: Yeah.

"BB-60: Yeah, BB-60.

"D'Agostino: Yeah.

"BB-60: Okay. I want uh Ohio State plus 15.

"D'Agostino: Okay.

"BB-60: For uh, a hundred.

"D'Agostino: Ohio State plus 15 for a hundred."

This is on page 59. I am awfully sorry. Okay.

"BB-60: Okay. I want Ohio State plus 15.

"D'Agostino: Okay.

"BB-60: For uh, hundred.

"D'Agostino: Ohio State plus 15 for a hundred.

"BB-60: And I want a 20-dollar parlay.

"D'Agostino: Yeah.

"BB-60: On Virginia, plus 10.

"D'Agostino: Virginia plus 10.

"BB-60: Yep. Manhattan plus 13-1/2.

"D'Agostino: Yep.

"BB-60: And Michigan State plus 13-1/2.

"D'Agostino: For 20?

"BB-60: Yeah.

"D'Agostino: Right."

Isn't that also consistent with a bettor?

A Yes, it is.

MR. RINALDI: That's all I have.

Thank you, Mr. Holmes.

CROSS-EXAMINATION (Con't)

BY MR. WEINSTEIN:

Q Mr. Holmes, you stated that you have based practically your entire testimony on the evidence in the composite transcript, isn't that correct?

A That's correct.

Q Now, on a number of occasions in conversations relating to the defendant Beach, he called and asked for line information, isn't that correct?

A Yes, that's correct.

Q And upon your review of the tapes, it appears, wouldn't it be a fair statement that he did no more, no less than possibly 15 or 20 other people, isn't that true?

A No.

Q It isn't. Now, you stated that on four occasions he was given bottom figures or he was given the amount that was wagered, is that right?

A On both teams in a single contest, yes.

Q And you stated this displays a position of trust, isn't that true?

A That's correct.

Q Except for maybe one instance, most of the individuals who called the numbers and are recorded in the composite tapes use a code name, isn't that so?

A That's correct.

Q And in fact, on many occasions, the man would start the conversation by, "Hello, young man," or "Hi there." Isn't that so?

A Yes, it is possible.

Q Now, doesn't this show you that Mr. D'Agostino knew the person on the other end of the phone?

A It is possible, yes.

Q Would a person who called and didn't have a code name and was unfamiliar to the man who would be taking a wager, would he be given information?

A No, he would not.

Q In other words, I couldn't call up, of course, taking a hypothetical, that I am unfamiliar with it to the man, I couldn't call this man up and say to him, ten bucks on this game or so and so, could I?

A Not usually, no.

Q Then there is an element of trust between the person who calls and makes a bet and the one who receives it in the respect that they know each other?

A It is not necessarily trust. It is knowledge of who he is talking to.

Q Fine. Now, in your examination of this transcript, anywhere within the four corners of the pages, do you see Mr. Beach using the information that he received?

A No, sir, I do not.

Q All right. So, in other words, all he did was call up and ask for line information?

A No, he also asked --

Q What else?

A He also requested and received the amount of money wagered on both sides, or both games of a single contest, which

is not normally given out.

Q It is not normally given out, but it is given out on occasion to others, is it not?

A To trusted employees, yes.

Q That is your opinion, that it is a trusted employee?

A That's correct.

Q Okay. Is it anywhere in this tape mentioned that he is an employee of this business, if you want to call it that?

A No.

Q Nowhere does it mention that, does it?

A That's correct.

Q All right. Now, nowhere in this tape or the composite transcript is there any mention of Mr. Beach, either collecting any monies or facilitating the business at all, is there?

A He, on one call, he calls in and asks for the bottom figure for one specific account.

Q On one occasion he did that, isn't that correct?

A That's correct.

Q On one and only one occasion he did that, and that is all?

A As far as I know, yes.

Q Within these tapes. Now, how many people, in your estimation, were placing bets with Mr. D'Agostino and the others whom you say are involved?

A I have no idea, I did not compute that.

Q Would it be considerable in number?

A I would say so.

Q All right. Yet, Mr. Beach only called and asked for one bottom figure, isn't that true?

A That's correct.

Q Now, is it not possible that could have been his bottom figure?

A No.

Q It isn't, and that is your opinion?

A That's correct.

Q Okay. Now, is an organization, if you want to call it that, or these type of organizations, are the people involved, in your experience, which is varied, they expect to make a profit from this, do they not?

A I would think they would, yes.

Q And do they usually share the profits on an equal basis?

A Share with who?

Q Share with each other.

A According to the position they occupy in the organization would determine what they receive from the profits.

Q Okay. And have you made any determination as to whether or not, based upon your examination solely of this transcript, whether this was a money-making operation?

A No, sir, I have not.

Q Do you usually make that type of determination?

A No, sir, we do not.

Q Now, you mentioned before that Mr. Beach on one occasion asked for a bottom figure for an individual. I believe it was RK?

A That's correct.

Q Now, that is a very short conversation, is it not?

A Yes, it is.

Q Can you find that for me quickly, sir? I believe it is on page 110.

A That's correct.

Q All right. And all he says is, "What is the figure?"

A "Could I have RK's figure?"

Q Right. And that's all he asks?

A Right.

Q There is no further conversation about what might be done with it, that is the total extent of the conversation, just asking for a figure?

A That is the typical language used in bookmaking operations to determine what figures are -- or what the customer owes to or by the bettor.

Q Okay. Yet, this is the only time Mr. Beach ever asked for this type of information?

A That's correct.

Q Okay. And have you had an opportunity to examine all these tapes, other than the composite?

A All the tapes?

Q All the other transcripts. There were other transcripts?

A Yes, I did.

Q And that is the only time that you saw that he asked for such a figure?

A I do not remember.

Q Okay. Now, at page 112, if you will refer to that, please, that is a conversation where Mr. Beach calls up and asks for a line. Would that be a fair analyzation of the conversation?

A Yes, it is.

Q And do you see about a third of the way down where D'Agostino states, "Well, it come in one, but I think we're gonna use it even."

Do you see that?

A Yes.

Q Now, Mr. Beach says, "You using it even?

A Yes.

Q It doesn't say "We using it even," it says, "You using it even."

A That's correct.

Q Now, you stated that you weren't in court and did not hear any of the testmony of any of the Government witnesses, isn't that so?

A That's correct.

Q Have you had the occasion to examine the grand jury transcripts of witnesses?

A No, sir, I have not.

Q You haven't examined those?

A That's correct.

Q Would your opinion of Mr. Beach be any different if you knew that four of the Government witnesses who were called never heard of him, never knew him and never had anything to do with him?

A No, sir, it would not change.

Q Okay. Because it is based solely on this and nothing else?

A That's correct.

MR. WEINSTEIN: No further questions, your Honor.

CROSS-EXAMINATION (Cont'd)

BY MR. PALMIERE:

Q Mr. Holmes, have you ever had an opportunity to listen to all of the tapes that were used in this case in intercepting the telephone conversations in this case from October of 1974 throughout January of 1975?

A Yes.

MR. FISHER: Pardon me. It was December.

BY MR. PALMIERE:

Q I'm sorry, December 1974 through January 1975, is that

correct?

A Yes.

Q And that from these tapes, a transcript was made of the entire recordings or just of a selected portion of the recordings?

A I have no idea what the transcripts were made of.

Q Well, you indicated earlier that you did read certain transcripts in connection with your preparation for giving your testimony in this case, is that correct?

A The composite transcript.

Q Is this the only transcript that you read in preparation for your testimony, just this composite?

A Today, yes.

Q And that composite represents a very small portion of the entire tape recordings, isn't that correct?

A Yes, sir.

Q Now, a bet is usually conducted between a bettor and his bookmaker or an agent of the bookmaker, is that correct?

A Yes.

Q And when that happens, the bettor indicates to the bookmaker that he wishes to bet or wager, let's say, a hundred dollars upon the outcome of a sporting event that necessarily involves two particular teams?

A That's correct.

Q Okay. So that a bettor then, if Buffalo and Boston are

playing basketball on December 21st, 1974, in order to bet on Boston, the bettor calls his bookmaker and asks him if he would accept a wager on Boston, is that correct?

A Most likely, yes.

Q As a matter of fact, much of the gambling business in this country today is conducted over the telephone, is it not?

A Yes.

Q And bettors have access to their bookmaker's telephone numbers, is that correct?

A Yes.

Q And the bettor obtains a telephone number from speaking with other bettors of that particular bookmaker, or agents of that particular bookmaker, is that correct?

A Yes.

Q So if I wanted to bet a bookmaker, I would first obtain his number from another bettor or an agent of the bookmaker, and I would start calling that particular man, that particular bookmaker, is that correct?

A Not necessarily.

Q But it can happen that way?

A I would think you would have to be cleared before they would accept it.

Q All right. Assuming there is clearance and the agent, or the bettor comes back to the other bettor and informs

him, you're cleared with that particular bookmaker, you can call anytime you want to and wager at that particular number; is that correct?

A Yes.

Q All right. And many times the bettor calling that bookmaker doesn't even know the identity of that bookmaker, does he?

A No.

Q And many times, of course, the bettor does know the identity of the man who is running that telephone, accepting his wages, isn't that also true?

A Yes.

Q All right. Now, because a sporting event involving two particular teams opposing each other in a particular evening or day, because those two teams vary in ability, one is an underdog and one is a favorite, the bookmaker has to establish a line. Without the line he would go bankrupt if he permitted bettors to bet him without giving the bookmaker any points, by merely betting the favorite all the time, correct?

A Yes.

Q All right. To give the jury an example, again, we all know that the Boston Celtics won the championship this year, and let's say in December of 1974 they were playing Buffalo, and the Boston Celtics historically have always

been a superior team, especially when they are playing home, isn't that correct?

A Yes.

Q And everybody knows this, even non-gamblers, people just reading the newspapers know this, isn't that correct?

A I would assume so.

Q All right. So, if a bookmaker was willing to accept the bettor's bet on Boston, even then the bookmaker knows that he can expect a hundred more telephone calls that day with a hundred bettors all jumping on Boston because Boston figures to beat Buffalo by a number of points, isn't that correct?

A Yes.

Q All right. So, in order then for the bookmaker to equalize the bettor to make the bet fair for himself as well as the bettor, he tells the bettor, if you want to bet Boston, Boston being the favorite, you will have to give up a stated amount of points, which is called the point spread, is that correct?

A Yes.

Q And if the particular line on that day had Boston minus 6, then the bettor agrees that if he wants to bet Boston $100, that he has to give up to the bookmaker, six points, is that correct?

A That's correct.

Q Again, to clarify this for the jury, if the game winds up now, Boston 101, Buffalo 100, those six points the bettor gave to the bookmaker has to reduce the total amount of points that Boston actually received from the game, to wit, 6 from 101.

A That's correct.

Q The net result of that game between the bookmaker and the bettor is that Boston received only 95 points, is that right?

A That's correct.

Q You compare that 95 points that they got by deducting their actual points minus the point spread, and comparing it with what Buffalo actually got, which was 100, Buffalo is actually the winner of that particular event, even though Boston actually won as far as their own schedules and positions in the league is concerned.

A According to the point spread, yes.

Q Right. So that if I bet Boston with a bookmaker minus 6 for $100, I, as the bettor, would lose, in spite of the fact that Boston actually won the game by one point?

A That's correct.

Q All right. Now, if I, as the bettor, find that Boston is minus six, favored by six points, and they are playing Buffalo at Buffalo, and I know how charged up a team can be playing at home, I, as the bettor, may then bet on

Buffalo and make the bookmaker give me six points, isn't that correct?

A Yes.

Q All right. So now, using that same example, if Boston wins 101 to 100, six points are added to the score of Buffalo, and they finish the game, for purposes of the bookmaker and [illegible]r, 106 over Boston to 101.

A That's correct.

Q So I, as a bettor, then win by betting on Buffalo because of the six point advantage I got, notwithstanding the fact that Buffalo really lost the game.

A Yes.

Q All right. Now, this point spread is called the line, correct?

A Yes.

Q And that line is very important to a bookmaker, is it not?

A Yes.

Q So wherever he obtains his line, he is confident that that is a good line, it is a line whereby engaging in business, using that line, he is not going to go bankrupt, he is going to win some and lose some, isn't that true?

A That's correct.

Q All right. Now, while we are still on the subject of the line, in your varied experience as an agent of the FBI, I assume you have talked to various bookmakers and

bettors during the course of your experience, is that correct?

A Yes.

Q And that is how you learned yourself as an expert, by talking to people who are knowledgeable bettors as well as knowledgeable bookmakers?

A Yes.

Q So, in your experience then, you have actually asserted the existence of mere bettors who know as much and sometimes even more than a bookmaker, isn't that correct?

A That's correct.

Q Now, isn't it also a fact that it is not unusual for a bookmaker to be dealing with a bettor who wages with the bookmaker on a number of events or a number of games per evening?

A No, it is not unusual.

Q It is not unusual. So why does a bettor then, assuming that I was knowledgeable, assuming I had confidence in myself to earn a little money, but certainly not lose a great deal of money, I then call up the bookmaker and I say I want to bet $100 on Boston minus six, I want to bet $100 on Notre Dame plus 13, and on and on and on, sometimes totaling 10 or 15 games on a particular evening, isn't that correct?

A Yes.

Q All right. And the total amount of those wagers that the bettor then puts up would be -- not talking about the vigorish for a moment, but we will get into that, he is actually risking, if he bet 15 games, a hundred dollars a game, right, he is risking $1500, right?

A Yes.

Q Now, in that particular situation, a bookmaker enjoys, does he not, taking a great deal of action spread over a great many sporting events? With volume goes a greater chance of him being successful?

A Yes, he would like volume.

Q And that is because of vigorish, and we will talk about that in a moment.

A Yes.

Q So, if I am a bettor now calling a bookmaker, and I bet every night with him, five games, ten games, 15 games, 17 games, at a hundred or $200 a game, because the bettor then is a regular customer, the bookmaker may then change his line a little bit for that particular bettor on at least some of the money that the bettor wagers, isn't that correct?

A It is feasible, yes.

Q All right. So, again, if I am a bettor, all the bookmaker -- and say I want $100 on Boston minus six, and I want $100 on Boston minus five or five and a half --

correct?

A Yes.

Q All right. And so the bookmaker then could give a regular customer, good customer of his bettor, as much as one point advantage on some of his action over and above what he gives to some of his smaller bettors, isn't that correct?

A It is feasible, yes.

Q And following my example along now, I am going to take the second game, Milwaukie, and take them minus five, Milwaukie minus four and a half, okay?

A Okay.

Q And on down the line, covering all 17 games where I bet at the point spread given to me by the bookmaker, and I bet some of my action at his point spread less a half point or point, is that correct?

A Yes.

Q Now, let's see what happens. Boston minus six that I took with the bookmaker, Boston minus five and a half, all right. The game now lines up Boston 106, Buffalo 101. Isn't it true that with respect to half of my bet, $100, we reduce six points from Boston's 106 and come up with 100 compared to Buffalo's total of 100 and we tie, isn't that correct?

A Yes.

Q However, on the second hundred dollars that I bet, you take only five and a half points off Boston's total score and the game winds up 100 points and one-half point over Buffalo's 100, so therefore, I, on half my action or half my bet with the bookmaker, win by a half a point, isn't that correct?

A Yes.

Q Okay. Now, in all of these tapes, when a bettor or whoever called a bookmaker, he called for the line originally, right, because that is the only time we can do business is when you have got a line available for me as the bettor, correct?

A Yes.

Q All right. So, with respect to every call, whether the man is a bettor, a commissioned agent, employee, bookmaker, the same line is read to all of those people on 10 or 15 games, depending upon how many games that bookmaker received a line on, is that correct?

A On most occasions, yes.

Q And normally would have, at least for the better, is that he says, I will call you back, Joe. I want to study this line and I want to make my selections after I give it some thought, after I check some newspapers to find out whether or not Havelacheck playing for Boston may be injured. It is going to be important for me as a bettor,

and I'm going to check as much as possible in order to make the most intelligent bet I can make, isn't that correct?

A Yes.

Q So he studies it, and then sometime later on he calls the bookmaker and he makes his bets, isn't that correct?

A Yes.

Q So now let's assume Boston or Buffalo minus six. The bettor decides that on that particular game, with that particular bookmaker, I am going to go over on the other side and take Buffalo plus six; correct?

A Yes.

Q So now that if Buffalo loses the game by less than six points, Buffalo will win the game, correct?

A Yes.

Q And with the good customer or good bettor, the bookmaker will even give that bettor a half a point or a point edge over other bettors, and he may say to him, I will accept your action, Buffalo plus six, Buffalo plus six and a half, correct?

A Yes.

Q So if the game winds up 106 to 100, and the bettor bet Buffalo, you add 6-1/2 points to Buffalo's score of 100 and Buffalo wins the game by half a point, isn't that correct?

A Yes.

Q All right. Now, if you will just bear with me a moment, I would like to now discuss with you the vigorish or juice which you told Mr. Fisher were synonymous terms, is that correct?

A Yes.

Q All right. Now, vigorish or juice is the percentage of the bettor's bet that the bettor must pay the bookmaker if the bettor loses in addition to the amount of his wager.

A Yes.

Q Okay. The bookmaker now, when he loses and the bettor wins, does not pay vigorish?

A That's correct.

Q He doesn't pay juice?

A Right.

Q So if I, as a bettor, bet a bookmaker a hundred dollars and I win, that is all I get is a hundred dollars, but if I lose, I have got to pay $110, is that correct?

A Yes.

Q And by the way, the evidence in this case, the tapes and so on, indicate that nobody put up money for the bet, it was all based upon credit and there was a settling up at the end of the week, or certain days after the bet went in?

A There is some indication of that, yes.

Q It was a credit arrangement and so forth, unlike let's say going to Las Vegas or even here in certain places, go in and bet a horse, I don't have to put up $20. At some places here I would put up $20 if I want to bet a particular horse, and if the horse won, I got my 20 back plus the amount of my winnings, okay.

In this particular case here, there was no money that was given to the bookmaker at the time you make the bet, but they relied upon each other's credit, the bettor and the bookmaker, correct?

A Yes.

Q Now, the vigorish or juice that only the bookmaker receives, and not the bettor, is something that differs, depending upon the community that the bookmaker is operating in, correct?

A Yes.

Q So you have seen evidence in this case that the vigorish was 10 percent, correct?

A Yes.

Q Now, in Rochester, the vigorish may be 15 percent, is that correct?

A Yes.

Q In Shreveport, Louisiana, it may be 20 percent?

A Yes.

Q And which would mean the bettor, by losing, would have to pay the bookmaker $120 if he loses in Shreveport and $115 in Rochester and $110 in the Syracuse area, is that correct?

A Yes.

Q All right. Now, it's because of this vigorish, is it not, that the bookmaker gains or has an advantage over a bettor, isn't that correct?

A Yes.

Q And that is the reason why the bookmaker enjoys, likes or wants a lot of action, regardless of whose bet, assuming his books are not too out of balance, is that correct?

A Yes.

Q Again, demonstrating this for the jury, if I can, I, as a bettor, bet a bookmaker $1,000 on one game and I lose that bet, I have to pay the bookmaker $1,000, correct? The bookmaker loses and he pays me $1,000, isn't that correct?

A You are not including the vig?

Q No.

A Yes.

Q So, in that case, you have a 50-50 chance, the bookmaker has a 50-50 chance of winning, the bettor has a 50-50 chance of winning and losing, correct?

A Yes.

Q So now, if I bet $1,000 with the bookmaker and I lose, I pay him $1,000 and $100, assuming a 10 percent vigorish, and if I win, he only pays me $1,000, correct?

A Yes.

Q And we each have a 50-50 chance of winning, so if the bookmaker loses, he pays $1,000 and wins nothing, correct?

A Yes.

Q However, now, supposing I, as a bettor, called him up and said $1,000 is too much money on one game, I want to enjoy a little chance of winning myself here, so therefore, I am going to bet 10 games, 10 games, 15 games, 20 teams, assuming that I bet 10, and I bet a total of $1,000, okay. Now, if half the teams that I bet on won and half the teams lost, it meant the reverse is true, too, the bookmaker won half and lost half, correct?

A Yes.

Q The same thousand dollars we are talking about.

Now, in that situation, there is an even split. $500 of the money that I bet on won and $500 of the money that I bet on lost, and one 500 cancels the other out, and I, as a bettor, receive nothing with a cancellation like that, correct?

A Yes.

Q however, the bookmaker, on the bets that he won, the five bets that he won, expects the bettor to pay him $10

per game or 10 percent of each hundred dollars that was wagered on each of the five games that the bettor lost, isn't that correct?

A Yes.

Q So there you have $1,000 bet on 10 teams. The bookmaker who charges vigorish but never pays vigorish winds up winning $50, even though he won and lost as many games as the bettor did.

THE COURT: How much longer do you think you are going to be?

MR. PALMIERE: It will be awhile.

THE COURT: All right. We will adjourn until tomorrow morning at 10 o'clock.

Don't talk about the case; don't let anybody talk about it with you.

(The proceedings were adjourned.)

JUNE 25, 1976

(Continued cross-examination of William L. Holmes.)

BY MR. PALMIERE:

Q Mr. Holmes, yesterday we discussed terms like line and vigorish, which are terms essential to the knowledge of a gambling business, essential to the knowledge required for the bettor to make an intelligent bet, and essential to the knowledge of a bookmaker to operate his own business, is that correct?

A Yes, it is.

Q All right. And yesterday, I believe that we agreed had we not, that it is much better, much more advantageous for a bookmaker to accept a total of a thousand dollar's wagers, or accept it on 10 games at $100 a game than it would be for him to accept one wager at $1,000.

A The bookmaker or the bettor?

Q Yes, the bookmaker.

A Yes.

Q All right. And that is because he has the 10 percent juice or vigorish going for him, so to speak.

A Yes.

Q Okay. Now, if in fact an individual places with a bookmaker, 20 bets on 20 different contests at $300 a contest,

totaling some $6,000, 300 times 20, $6,000 total wagers on those 20 teams?

A Yes.

Q Right. Now, you would agree, would you not, that that would be a very advantageous bet to accept by the bookmaker, for the bookmaker to accept?

A It would be a preferred bettor, probably, yes.

Q So in that situation then, if 10 games should win and 10 games should lose, the bookmaker then would win at least $300 or 10 percent of $3,000?

A Yes.

Q And the bettor himself would win nothing, even though he won 10 games?

A That's correct.

Q So, would you not agree then, Mr. Holmes, that if there was evidence in this case that Mr. Grezo bet a total of 20 games, totaling some $6,000 at $300 a game with a bookmaker, that it would have been foolish for Mr. Grezo, if he was a lay-off bookmaker, to have transferred that action, that $6,000 action to the bookmaker?

A Not if he was taking in quite a bit more action than just the $6,000.

MR. PALMIERE: May I use the blackboard, your Honor?

THE COURT: Yes.

Do you want to move it over here, Mr. Palmiere, so the jury can see what you are doing?

MR. PALMIERE: Yes, sir.

THE COURT: Put it right over here. The witness can come down, if you want.

MR. PALMIERE: All right. Could you step down, Mr. Holmes?

(Witness leaves witness stand.)

BY MR. PALMIERE:

Q Can I just ask you a few more preliminary questions before we get to the blackboard?

Now, because the bookmaker has the advantage of the juice or the vigorish, the 10 percent that he gains on bets that the bettor loses, the bookmaker then, to be successful on every day of his operation, would strive for what we would call a balanced book, isn't that correct?

A That's correct.

Q All right. So that if, at the end of a given day, numerous bettors called the bookmaker and bet Boston, bet on Boston, a total of $10,000, and similarly, because of the raising and lowering of the line, he was able to convince the bettors to bet the underdog with him, Buffalo, and to that extent, and accepted let's say $5,000 on Buffalo --

A Yes.

Q All right. So now, if Buffalo wins the game based upon the point spread, if Buffalo wins the game, then in that event, the bookmaker would earn $11,000, 10,000 plus 1,000 in vigorish; is that correct?

A Yes.

Q And from that 11,000, he would pay to the bettors who bet Buffalo $5,000 for a net gain of $6,000.

A That's correct.

Q Correct. All right. And that would be a great profit day for the bookmaker, isn't that correct?

A Yes.

Q However, when he accepts this action in this fashion, $10,000 Boston, $5,000 on Buffalo, he doesn't know who is going to win, so he may not want to risk $5,000, isn't that correct?

A Yes.

Q So what he may do then is transfer to another bookmaker $5,000 in action, is that correct?

A Yes.

Q All right. If he does that, then he has $5,000 on each side and his books are in complete balance, right?

A That's right.

Q Now he doesn't care who wins, isn't that correct, because if Boston should win the game, then he takes the $5,000

that the Buffalo bettors had bet with him and who have lost because Boston won the game, and he pays the Boston bettors, correct?

A Yes.

Q But because these people have to pay 10 percent vigorish, he's able to retain $500?

A Right.

Q Because these bettors now are paying him, actually give him 55.

A Yes.

Q He only needs five to pay off the bettors who bet him on Boston because he has got $5,000 coming back from that bookmaker because he bet this bookmaker that Boston would win for $5,000. Boston wins, he gets 5,000 from this bookmaker, $5,000 from the Buffalo bettors, and it enables him to pay off the $10,000.

A Yes.

Q And he has a net profit of $500 simply for the vigorish or has resulted in the juice that the bettors have paid him who bet on Buffalo and lost.

A In that particular instance, yes.

Q All right. Now, there are occasions, are there not, when a bookmaker gambles a little bit, too. He says, look it, I can't pay my expenses if I am just going to earn vigorish or juice, so I am going to look for a balance

between games that will permit me to gamble a little bit, so that if the game upon which I have the most action should win, I am not going to get hurt too much because the ratio between this side and this side is such that even if the side that is overbalanced with bets should win, I am not going to get hurt too bad, and still there is a chance that I could still win quite a bit.

A That's right.

Q Right. But in this particular example, let's say the bookmaker is taking in thousands and thousands of dollars a day, this would be too risky for the average bookmaker, wouldn't it?

A Usually, yes.

Q By having books overbalanced to the extent of $5,000.

A Unless he feels that that 5,000, and $10,000, in his mind is a balanced book, if he felt Boston was sure to win, he would leave it.

Q Right. But on the surface, at least, he may not want to risk that $5,000.

A That's right.

Q Right. Unless he is a good bookmaker and he can afford to lose $5,000, or I should say it would be $4500, correct?

A Right.

Q 55 less the 10. All right. Now, let's assume that on

Buffalo and Boston it was 600 on Boston and 300 on Buffalo, all right?

A Yes.

Q Now, even though the ratio is the same, two to one, the amount of money is certainly not as great as it is in the first example, correct?

A That's correct, the risk is not as great.

Q Okay. So in that situation, the bookmaker may want to gamble a little bit himself and keep the whole 600, so that if Boston loses on this side, he is going to get 660 back, and pay -- strike that.

If Boston now should lose the game, Buffalo wins.

A Yes.

Q Okay. He would get back $660 from the bettors who lost by betting Boston, is that correct?

A Yes.

Q He will need 300 of that to pay the winning Buffalo bettors for a net profit of 360, correct?

A That's correct.

Q If the reverse occurs, however, if Boston does win and he hasn't laid off any part of the $600 with another bookmaker, he will need $600 to pay off his Boston bettors, and he will get $330 from the Buffalo bettors, 300 plus the vigorish, for a net loss of $240, correct?

A 270.

Q 270, okay, 270.

A Yes.

Q Okay. Now, if that is the only bet he took that day and he can risk losing $270, correct?

A Yes.

Q So if that is the only bet he took that day, he may want to then lay off $300 with this bookmaker so that it doesn't matter who wins, he winds up with a vigorish of $30, correct?

A Yes.

Q However, if he has bets that are balanced in this fashion, two to one, 600 on one side and 300 on the other side, or 400 on this side and 200 on this side, if he has that kind of balance and that kind of action accepted on 20 games -- I believe we agreed earlier that 20 games with this kind of action would be beneficial, that would be a beneficial bet or bets for the bookmaker to retain, to keep?

A It could be, yes.

Q All right. Because we said if there is 20 of these all the way down the line to 20, and he has taken 600 here and 600 all the way down to that 20, that would be --

A 12,000.

Q $12,000, correct?

A Yes.

Q If he breaks even, if half win and half lose, correct, the bookmaker winds up a winner to the extent of the vigorish which would be 10 percent of $12,000, or $1200, is that correct?

A Yes.

Q And similarly, if with the other 20 bets now, he has got 300 aside times 20, if he breaks even on those, he wins 10, and the bettor wins 10, he winds up with a vigorish of 10 percent times $6,000 which would be $600.

A That's correct.

Q So this kind of action, three to six spread over 20 games, okay, by the bookmaker breaking even and winning half and losing half, he has got to win the vigorish, he has got to at least be able to retain the vigorish which would be 12,000 if all of the six -- if it was a break even on the 600 games, and 600 if it was a break even on the 300 games.

A That's correct.

Q All right. You see evidence in this case, do you not, that on the 11th day of January 1975, Mr. Grezo bet with a bookmaker, a total of some 17 games at two or three hundred dollars a game.

A Yes.

Q Totaling some $4500, correct?

A I believe that is correct.

Q All right. Now, if on each of those games, 17 games, he is laying off two or three hundred dollars, then we could assume, could we not that his books were overbalanced in this fashion, $600 on one side, 300 on the other and he is getting rid of three of the six.

A Theoretically, yes.

Q Theoretically, all right. Now, when you saw those tapes on January 11th, '75, was that the assumption you made, that when Mr. Grezo bet $300 on 17 individual games, that he was laying off $300 of the action he took on that particular team?

A No.

Q You were not?

A No.

Q And Mr. Grezo was a bookmaker and had, on a given contest -- if I can just erase this for a moment. I'm sorry.

If Mr. Grezo was a bookmaker and had accepted a total of $900 in wagers on a Buffalo-Boston game, and accepted $600 on the Boston side and $300 on the Buffalo side, a total of $900 is what he took in then, correct?

A Yes.

Q All right. And he also did this with 16 other teams, and if we can just change that 16 to 20 to make the arithmetic a little easier, we can assume he bet 20 on January 11th.

A Yes.

Q And his action was spread, he put $900 on each game.

A Yes.

Q A total of nine, six on one side, 300 on the other side. Okay.

If Mr. Grezo had not laid off $300 but had retained this balance throughout the 20 games --

A Yes.

Q -- he would have earned, by breaking even, $1200 if all of the bets that he won on were on the 600-dollar side, and $600 if all of the bets that he won on were on the 300-dollar side, correct?

A Yes.

Q All right. But if there was a mixture of some on this side and losing some on this side, winning, et cetera, and all the way down the line, he would have to, at the end of the day, even if there was a break even, and there was a break even, earn money, be able to keep money represented by the vigorish or the juice, correct?

A Yes.

Q All right. Now, to go back to my former question, you indicated that it was not your assumption that Mr. Grezo who was taking in $900 a game and balanced three to six in laying off half of the six, that that was not the assumption that you were making in arriving at your

conclusion that he was a lay-off bookmaker.

A That's correct, that was not --

Q All right. It was not one of the facts that you based --

A That was not the primary factor that I based my analysis on.

Q But was it a factor, was it part of your consideration in arriving at your opinion that you expressed here yesterday concerning Mr. Grezo?

A No, it was not.

Q This kind of factor was not one of the assumptions that you were making in arriving at your conclusion that you expressed yesterday?

A No. It supported my assumption.

Q It supported it, okay.

A After the other facts I found in the transcripts, it helped determine what my analysis of his position would be.

Q All right, fine. And I believe you said yesterday it was your opinion, correct me if I am wrong, that in your opinion, Mr. Grezo was conceivably a bookmaker, or conceivably a writer, but certainly more than a mere bettor?

A That's correct.

Q Okay. And that is the word you used, conceivably?

A In my opinion.

Q In your opinion, he conceivably was either a bookmaker or

a writer, but certainly more than a bettor?

A Yes.

Q All right. Now, if you could for a moment, at least remove from your mind the other considerations that you based your opinion on, would you have arrived at the conclusion that Mr. Grezo was conceivably a bookmaker by looking at the action on January 11th, and again, I believe, on January the 4th, 1975, where you saw bets totaling two and three hundred dollars that he was making with Joey D'Agostino at two and three hundred dollars a bet?

A Would I what?

Q If that was the only evidence in this case, that he bet on those two days, all of those games at two and three hundred dollars a game, would you arrive at the opinion he was conceivably a bookmaker?

A If that was all that was presented, no, I would not.

Q You would not?

A That's correct.

Q All right.

A The number of bets does not indicate --

Q All right. I guess I should have asked you that in the beginning, I'm sorry.

So that under no stretch of the imagination, anyone who knows betting, gambling and so on, could

possibly predicate an opinion that a man is a bookmaker based upon the number of bets he himself makes with a bookmaker?

A That's correct.

Q In spite of the size of each of those bets, if the size is relatively the same on each of the 17 contests, or 20 contests, correct?

A That's correct.

Q Okay. And of course, the reason for that opinion is because of the distinct possibility that a bookmaker knows that if he just breaks even, he has got to win either 1200 on one side or the $600 vigorish on the other side if the books were balances 300 and 600, if his books were balanced 300 and 600?

A You predicated that with the reason being -- the reason for what?

Q Well, right. Then to go back for a moment, you cannot formulate your opinion that Mr. Crezo was a bookmaker based upon the number of bets he made on either the 11th or the 4th of January 1975, as long as the amount he bet was the same on each game or relatively the same?

A No. The number of bets or quantity or amount of bets had nothing to do with my decision.

Q All right. And that is because if Mr. Crezo had been a bookmaker and was laying off that kind of action, he would

be giving away a large portion of the vigorish that he could be retaining for himself, isn't that true?

A Not necessarily.

Q But that could be an explanation?

A Theoretically, yes.

Q In other words, even the average bookmaker is not concerned about laying off $300 when he has got a total action on a game of $900. That is a pretty good ratio for him to work with, two to one, correct?

A If that is, in his opinion, the way he balances his books, yes.

Q But certainly he has got $10,000 on Dallas on a football contest and $4,000 on Pittsburgh, $6,000 may be too much for that particular bookmaker to risk losing, so he takes that difference, the 6,000 and wagers with another bookmaker, and that is what is called a lay-off bet?

A That's correct.

Q All right. Now, would you explain to the jury, please, what it means to catch the middle or a sandwich bet?

A You mean middling?

Q Middling.

A That is when a bettor shops around with different bookmakers, looking for a point spread on the same game, meaning that one bookmaker will have maybe a minus of six points on the favorite on one game and another

bookmaker will have maybe minus seven for the same game.

Q Right.

A And he will bet with both bookmakers with the chance that the final score will come in between that point spread so that he can conceivably win both bets or tie one and win the other.

Q All right. So what we are saying then, what you are saying is that when a bettor tries for a middle or tries middling, he bets one side with one bookmaker and the other side with the other bookmaker and tries to catch the point in the middle, and if he does that, he wins both bets, and it is impossible for him to lose any more than the vigorish, isn't that correct?

A That's correct.

Q All right. I think I would like to show that to the jury on the blackboard. Could you just step down here again? Let's take the contest Boston and Buffalo. The bettor calls bookmaker A and he finds that the line on Boston is minus 6, correct?

A Yes.

Q So therefore, similarly, with that same bookmaker, the line on Buffalo is plus six, correct?

A Correct.

Q We said that yesterday, the scores of these two teams would be compared. Boston score would be reduced by six

and that subtraction would be compared with the Buffalo score to determine if Boston won as far as the bettor and bookmaker was concerned.

A That's correct.

Q All right. Now, let's assume now that that same bettor calls bookmaker B, and he finds that Boston is minus eight. Now, that is considered a very good possibility for a middle bet, isn't it?

A It is a good spread, yes.

Q And would you agree that one of the explanations for this kind of difference among bookmakers is the variation in the way his own bettors bet him, determining the balance of his action, and if bookmaker B now, who started off with Boston minus six, right, gets $10,000 on Boston and $5,000 on Buffalo, okay, he wants to raise the line to eight, hoping that his bettors will not bet on Buffalo plus eight?

A That's correct.

Q Correct, all right. So, this is bookmaker A, this is bookmaker B, all right. So the bettor now calls in for the line first with bookmaker A and finds out that it is Boston minus six. He doesn't normally bet when the line is given to him, does he?

A No, he considers it.

Q He will consider it, and in considering it, if he has an

additional bookmaking source, or even two additional bookmaking sources, he will then call bookmaker B, and that is when he will find out that Boston, with bookmaker B, is minus eight, correct?

A Yes.

Q All right. Now, would you agree at that time that the bettor, if he knows anything at all about gambling, has got to jump on this game, he has got to bet it.

A Yes.

Q And he does so by doing this: he calls bookmaker A, and he says, I want Boston minus six with you, bookmaker A. He then calls bookmaker B and he says, I want Buffalo plus eight. Correct?

A Yes.

Q If the score now winds up Boston 107, Buffalo 100, he wins both bets, doesn't he?

A Yes.

Q And that is because with bookmaker A, he has to reduce the 106 by six, arriving at a conclusion or a net score of 101. Comparing that to the 100 with bookmaker A, he has won the bet with Boston.

A Yes.

Q Because the game ended up 101 to 100. Now, similarly, he goes to bookmaker B and he now adds the eight points that that bookmaker gave him and adds it to that score and

comes up with 108. He wins now over Boston who got only 107, he wins by one point.

A That's correct.

Q So he wins both bets.

A Yes.

Q So if he bets Boston 300, Buffalo 300, he wins a total of $600.

A Correct.

Q But middling [illegible] is not too frequent, it is difficult to obtain point spreads of six and eight, correct?

A That's correct.

Q So this game might be only -- with this bookmaker here, the game might be only seven. Supposing now that he is a regular customer of bookmaker A, and because of the regularity with which hebets, and we said yesterday that a bookmaker likes a bettor who bets a lot, lot of games, it tells him you can bet Boston minus six and you can also bet Boston minus five and a half. And we said that is fairly common with a good bettor?

A Yes.

Q All right. Now, even though we can't get Buffalo plus eight, he knows he can get Buffalo plus seven. Now, if, in this example over here, the game falls 107 to 100, all right, in that situation he would -- I will just change this here. Let's assume now that Boston actually

wins the game 106 to 100, okay, and he gave up six points on Boston, with respect to half his action, $100, he ties with bookmaker A, correct?

A Yes.

Q Because you have to reduce this score by six points, leaving a hundred, and that would indicate that there was a tie, correct?

A That's correct.

Q All right. However, since they only had to give up five and a half points on his other action, all right, he takes five and a half points off this and the game winds up 100-1/2, and the score winds up 106 to 100, taking off five and a half points, off 106, he wins half a point over Buffalo, correct?

A Yes.

Q All right. And with bookmaker B who he got just one more point than he got with Boston with the bookmaker who gave him six and a half of his action, he wins that bet, too.

A That's correct.

Q All right. Now, in the end result, as we indicated, middling is something that does not happen every day, correct?

A They strive for it, yes.

Q But bettors do strive for it, correct?

A That's correct.

Q And that is why they shop around with various bookmakers in an effort to catch the lines, to catch a difference in the lines to permit this type of betting, correct?

A That's correct.

Q All right. Because he is betting both sides. With bookmaker A, he is betting Boston and with bookmaker B, he betting Buffalo, the same game. It is possible that now Boston with Havelacheck and so on, winds up with 150 points and Buffalo winds up with 100, so regardless of that point spread, there is just no way he caught a middle on that day, correct?

A That's correct.

Q All right. So, with the bookmaker that he bet on Buffalo, he loses, correct?

A Yes.

Q However, he wins with Boston, correct?

A Yes.

Q So his action is, let's say, $200 here and $200 there. They cancel out and he doesn't lose the amount of his bet, correct?

A That's correct.

Q Except he does lose some money, doesn't he?

A That's right.

Q He loses the vigorish that he has to pay to the winning bookmaker?

A Yes.

Q Correct. And in that case, he would pay 10 percent of $200, or $20?

A That's correct.

Q So in that game where he bets 200 with one bookmaker and 200 with another bookmaker, he invests a total of $400, but because there is no way under the sun he can lose any more than $20, isn't that correct?

A That's correct.

Q So for a 20-dollar investment, he has the possibility of winning $400, correct?

A Yes.

Q And if he bets on 17 or 18 games and he tries for the middle on every single one of them -- okay?

A Yes.

Q And trying for the middle, I mean, betting the opposite sides, betting Boston with bookmaker A and Buffalo with bookmaker B, he takes $5500 with bookmaker A, bets him 5500, goes to another bookmaker, let's assume in Binghamton, New York, and he bets him $5500, and when you look at that, you will say this man has bet a total of $11,000, correct?

A Yes.

Q But in reality, even that he cannot lose $11,000, we know he cannot even lose $5500. We know that he can only

lose 10 percent of $5500 which is the vigorish, $550.

A If he bets on both sides, yes.

Q If he bets on both sides, all right. Now, in that situation, if he catches one middle out of 17 games or 20 games, he bets one middle, the money he wins on that game, winning both sides, right, will more than compensate him for any loss in vigorish he sustains with any of these bookmakers, correct?

A It is possible, yes.

Q So in that example I gave you, it is conceivable, not too probable, I admit, conceivable that on 20 games that he bets on, or let's strike that, let's just assume he bets on 10 games, a total of $5,000 with bookmaker A, $5,000 with bookmaker B, it is conceivable that that man, for a 500-dollar investment or risk, can win $10,000, correct?

A Theoretically, yes.

Q Theoretically, yes. All right. And the more games he wins out of the 10, the more games he middles out of that 10, permits him to earn a lot more money or compensate him for any vigorish that he would lose?

A That's correct.

Q And where a bettor has split his bet minus five and a half for a hundred on Boston and plus six with Buffalo here for another hundred it is possible that with respect to the

one of these bets here for $100, he ties and wins and doesn't lose his bet?

A That's correct.

Q And win this one also?

A Yes.

Q And so in that example, a total of $10,000 wagered, he risks $500, is that correct?

A Yes.

Q Now, you have known bettors, have you not, who bet $500 on one game?

A That's correct.

Q $1,000 on one game?

A Yes.

Q $2,000 on one game?

A Yes.

Q These are simply bettors who do not share in profits or earnings of the bookmaker, but who gain only out of their own personal gambling winnings, correct?

A That's correct.

Q And so there are bettors then who bet that kind of action without even trying for a middle, without betting the other side, to help insure against loses, is that correct?

A It is feasible, yes.

Q All right, Mr. Holmes. You indicated that you did not predicate your opinion that Mr. Grezo was conceivably a

bookmaker on the number of bets that he made, even for the total amount of $5,000 on January 11th, as I remember, and maybe three to five thousand dollars on January 4th, you did not predicate your opinion he was a bookmaker on those two facts alone?

A That's correct.

Q All right. As a matter of fact, you did not consider that as part of your opinion, because it is inconsistent with being a bookmaker that he lays off that kind of action and more consistent that he is a bettor?

A No, a bookmaker can lay off that kind of action.

Q But, at any rate, in this particular case, you did not call Mr. Grezo conceivably a bookmaker because of the action that he gave over the telephone in this case on January 11th or January 5th, or for that matter anything he did in this case?

A That's correct.

Q You additionally said he was conceivably a bookmaker or conceivably a writer. Now, let's talk about a writer. We know that in any gambling business, you have an individual who mans the telephones and accepts bets over the telephone from bettors, agents employed by him, independent bookmakers who lay off to him, is that correct?

A There are individuals like that, yes.

Q All right. And the agents that call in are commissioned

agents or writers, is that correct?

A They are writers, but not necessarily commissioned.

Q All right. They either work on a commission, is that right?

A It is feasible.

Q Or get paid a weekly salary?

A It is feasible, yes.

Q But at any rate, they are not doing it for nothing, they have got to get paid from the bookmaker for being out on the street collecting these bets and calling them?

A There are writers who do not get paid, they do it for other considerations.

Q Okay. But, by and large, generally speaking, a writer shares in the profits of his bookmaking?

A Not necessarily, no.

Q But there are writers who do share?

A That's correct, there are some that do.

Q All right. And either get paid a weekly salary or sometimes they could receive a commission based upon the bets the bookmaker wins, correct?

A Yes.

Q Assume that we do have a writer who is paid based upon the bets he brings in that the bookmaker wins, the losing bets in other words, the bets that are lost by the bettors and are won by the bookmaker, correct?

A Yes.

Q So he gets paid on his bettor's losses which is the same as saying on his bookmaker's winning, correct?

A If that is the arrangement, yes.

Q And he can obtain as much as 30 or 40 percent, correct?

A As I said, if that is the arrangement, yes.

Q Or he can get a weekly salary?

A That's correct.

Q That is one other possible arrangement, correct?

A Yes.

Q Now, in that situation, wouldn't you not say where he is getting paid a commission or weekly salary, that the interests of the writer are consistent with the interests of the bookmaker?

A Yes.

Q In other words, when the bookmaker makes a profit, the writers are going to make a profit. When the bookmaker sustains a loss, the writer isn't going to get paid, correct?

A If he is on a salary or commission, correct.

Q So the interests are the same in that example I gave you where he is working on commission or weekly salary?

A In that example, yes.

Q Okay. In that example I gave you where he is getting paid a salary and/or commission, certainly the interests of

the writer are not in conflict with the interests of the bookmaker?

A Not usually, no.

Q All right. Now, do you have the composite with you?

A Yes.

Q All right. Refer to page 1, going to the middle of the page, starting with "D'Agostino: What did Houston do?

"Grezo: Houston lose.

"D'Agostino: Well, beat ya then."

And then there is some choice language immediately thereafter, is that correct?

A Yes.

Q All right. Now, isn't the very, very probable and conceivable interpretation of that that the bookmaker is asking his bettor, you bet me Houston yesterday. How did Houston make out? The bettor tells him Houston lost. The bookmaker then says, we beat you then. Naturally, if Houston lost and the bettor bet on Houston, the bookmaker won the bet if Houston lost, so he says, we beat you then. Correct?

A It also applies to another bookmaker calling in, too.

Q All right. It is consistent with another bookmaker and also consistent with a bettor, correct?

A That's correct.

Q Okay. Now, throughout these transcripts, you do not bother,

or attempt, did you, to determine what teams won or what teams lost in arriving at any conclusion that you rendered in this case?

A The conclusion as to what?

Q Conclusions that the person is a bookmaker or a writer or a bettor. You did not consider whether or not anyone won or lost?

A That's correct.

Q You didn't even make any computations, go to any schedules or result schedules to determine who won and who lost here, you weren't interested in that?

A I checked to see whether the games were played.

Q But you never bothered to check who won or lost the games?

A That's correct.

Q All right. Now, that is January 4th that you are reading from, correct?

A Yes.

Q Okay. Now, I think we can prove, can we not, if we go to January 3rd, and I am first going to ask you if you know that on January 3rd, 1975, in the afternoon's action, so to speak, that Grezo called D'Agostino and bet on four different sporting events -- strike that -- five sporting events in the afternoon, that he bet on Marquette over DePaul, he bet on North Carolina over Wake Forrest, he bet on North Carolina over Duke and

he bet on Houston over Hawaii.

A Excuse me. What page is that?

Q Well, you'll just have to go to January 3rd, 1975. Just a moment. This is all in evidence and I would just ask you to assume these facts and speed up this cross-examination.

Let's assume for the moment that in the afternoon of January the 3rd, Grezo bet D'Agostino on five games.

A Yes.

Q Four were college, Marquette against DePaul, North Carolina versus Wake Forrest, North Carolina versus Duke, Houston versus Hawaii, then he bet a pro game, Cleveland versus Houston.

And let's further assume that when he bet on Marquette, Marquette lost; when he bet on Northa Carolina, North Carolina lost.

MR. FISHER: Excuse me. It is page 157.

MR. PALMIERE: Page 157.

Q And that when he bet on Houston over Hawaii, that even though Houston won, they did not win by a sufficient amount of points, so Grezo lost that bet.

I'm awfully sorry, Mr. Holmes, but I have made a mistake, and I am just going to repeat this question once more.

Assume that on January the 3rd, that Mr. Grezo bet on seven individual contests, all right?

A Yes.

Q And that he lost four of those contests and won three of those contests.

A Yes.

Q And that Houston was one of the teams that he bet on and lost, assume that.

A Yes.

Q Then would that additional fact help be further consistent with that conversation being consistent of the bookmaker to h[illegible] bettor where he tells him, I beat you four ou[illegible] of seven games, we beat you [illegible]en?

A It can still apply to a bookmaker talking to a bookmaker.

Q All right. Are there any conversations on January the 3rd, 1975, where Mr. Grezo accepts any bets from anyone?

A No, sir.

Q All right. Now, so there will be no mistake and the jury may be looking for the results, it is true that you are unable from these transcripts to determine what teams won or lost by the specific points involved, isn't that correct?

A That's correct.

Q In other words, you would have to go to a separate source, determine who each team'sopponent was that is reflected

by the lines and the bets, go to another source who gives you the results of each college game played in 1974 or 1975, and in that manner determine whether any of these bets won or what percentage won and what percentage lost, is that correct?

A That's correct.

Q But you won't find it in the transcript. All right. Going to page 128 of the transcript, reading it, the conversation beginning with D'Agostino, "Eh, what the F, it ain't no good."

Continuing on, down four or five lines. All right. Now, that initial language, you could read it. Now, that is an indication by D'Agostino, anyway, that neither D'Agostino nor Grezo share in the same profits, isn't that true?

A Repeat the question, please.

Q That language by D'Agostino, "You could really F me tonight," that is an indication that D'Agostino does not share in the Grezo profits, and Grezo does not share in D'Agostino's profits, isn't that correct?

A It is feasible.

Q All right. That conversation by Grezo, UNT, which I assume is unintelligible, correct?

A Yes.

Q Unintelligible, "What do you want me to do?"

"D'Agostino: You ain't gonna anyway."

Now, is a possible interpretation of that sir, that D'Agostino was having a bad success in the business up until that point, or at least based upon the prior day's activity, and he wants to limit D'Agostino's bets, and D'Agostino was telling him, if I try to limit you, you are not going to like it, you are not going to do it anyway, you are going to convince me to take you, the regular action of 100 or 200 dollars a game. Isn't that a possible interpretation of that?

A It is possible, yes.

Q That expression, you can really -- et cetera, et cetera -- is a further expression of concern by D'Agostino that Grezo's bets will cause D'Agostino financial injury and financial harm, isn't that a possible interpretation?

A Not necessarily, no. It could mean that he is doing him a favor by accepting more than he was told the limit should be.

Q And that is another possible interpretation?

A That's correct.

Q Not entirely inconsistent with the interpretation I just suggested to you?

A That's right.

Q All right. Now, there is an expression there by D'Agostino that he wants Grezo to hurry up and mark down the line,

isn't there?

A Yes.

Q He is saying, I have got people trying to get in or something to that effect, correct?

A That's correct.

Q All right. Now, there is no expression there by Grezo that says, yeah, I want to hurry because my people are calling me, too, is there?

A No, there is not.

Q And as a matter of fact, you saw evidence in this transcript where an agent of the bookmaker did make statements like that to the effect that, hurry up, give me the line, I have got people that I have got to give it to?

A Each individual has their own characteristics.

Q All right. At page 130, top of the page, D'Agostino tells Grezo, "Ain't got no pros.

"Grezo: No -- " et cetera, et cetera.

"D'Agostino: You ain't gonna get anywhere you call anyway. I got em, but they ain't got any."

All right. Isn't that an indication by D'Agostino that he is aware of the fact that Grezo has access to an additional bookmaker who can give him the line on the pros?

A An additional line, not necessarily a bookmaker.

Q But it could mean that he knows, he has knowledge of an additional bookmaker who can provide him with the line?

A As I said, it could also be just a line source, not necessarily a bookmaker.

Q Okay, fine, fine. But if, on that date, December 21st, Mr. Grezo did in fact earlier call another bookmaker in Binghamton, New York, and as a matter of fact, bet with him, that would be clear evidence then, would it not, that Grezo had another bookmaking source?

A Yes,it would.

Q Especially, would it not, if Grezo bet with D'Agostino, Louisville, and then called Binghamton and bet its opponent, Marquette. Now, if you can just make that assumption, it is not all there, you are not going to find it in the transcript -- strike that.

You will find in the transcript that he did bet on Louisville. On page 129, D'Agostino gives Grezo the odds on Louisville, one. That means minus one, correct?

A Yes.

Q All right. And from this transcript, we don't know that Louisville was in fact playing Marquette that night, do we?

A Not in that particular call, no.

Q Page 134, towards the bottom of the page, that would still

be on the same date after D'Agostino gave him a line of Louisville minus one, D'Agostino then accepted a bet from Grezo, Louisville, a buck each, is that correct?

A On December 21st, yes.

Q On December 21st, all right. And as a matter of fact, there is an indication that he bet Louisville even for a dollar, minus a half for a dollar. Would you refer, please, to page 129. I think that would help you answer that question.

A That is where he is giving the line?

Q Yes. Okay, 131, halfway down the page where it says, "All right. Mumble. Give me Louisville even and a half, buck each."

A Yes.

Q Okay. So on December 21st, he bet Louisville minus one and a half for 100 and even for 100, and assuming, and we don't know this from the transcript, assuming that Louisville was playing Marquette, that that is the bet he made, one of the bets he made with D'Agostino, correct?

A Yes.

Q All right. For a hundred, okay. Now, let's assume that either before or after he called Binghamton and placed a bet with them in Binghamton, placed a bet on Marquette plus two for $200. Can we assume that for a moment?

A Yes.

Q There is a clear indication of a bettor attempting for a middle, isn't that correct?

A It could also be a bookmaker or a writer doing it on his own, too.

Q All right, consistent with a bettor, consistent with a bookmaker, correct?

A That's correct.

Q And you know many bettors who do this every day, is that correct?

A That's correct.

Q And you know some bookmakers who do it, too?

A That's correct.

Q And that is why you say it is consistent with both, all right.

So if this game wound up by Louisville winning 80 over 69, there would have been no successful middle, correct?

A That's correct.

Q But in that case, Mr. Grezo would have won his Louisville bet, correct?

A Yes.

Q With Mr. D'Agostino. And he would have lost his Marquette bet with Binghamton, right?

A That's correct.

Q And with Binghamton, he would have lost a vigorish of

$20, ten percent of $200?

A Yes.

Q So he had a chance of winning four and no chance of losing more than $20, right?

A That's correct.

Q All right. Now, page 131:

"Grezo: You want to do anything?

"D'Agostino: Go on, ya, go ahead.

"Grezo: I mean uh.

"D'Agostino: You want me to tell you what ya want?"

Now, isn't that a further indication there that D'Agostino knows that Grezo was calling other bookmakers to get their line and that D'Agostino may have some information concerning that line himself, and he can almost guess, because he is dealing with Grezo every evening, what Grezo is going to attempt to do in betting him?

A No, that isn't what I get out of it.

Q Pardon me?

A That is not what I interpret it to be.

Q You do not?

A No.

Q All right. Page 132:

"D'Agostino: You may not win em every

night, you know."

That is consistent with Grezo being a bettor, is it not, and his interests and the interests of D'Agostino are in conflict?

A That is also the same with another bookmaker.

Q Page 136:

"D'Agostino: What are you bothering me for? You cost me money."

Indicating that they are not working together, isn't that true?

A They could also be joking with each other, because they are friends.

Q Certainly, that is based on speculation on your part. Your interpretation could be right and my interpretation could be correct, correct?

A That's correct.

Q All right. As long as we agree on that, that you can guess as well as I can, then I think we are in agreement.

MR. FISHER: Objection to that last remark and move that it be stricken. It is argumentative.

THE COURT: Overruled. I will let it stand.

BY MR. PALMIERE:

Q All right. Now, page 138, D'Agostino, about a third of the way down the page says, "Three tonight, Houston."

All right. Do you know of your own knowledge what Houston they were talking about, whether it was Houston College football or Houston pro football, or what, or whether it was even a football game?

A No, I don't.

Q You don't, all right. Can you, and I assume just for one moment, that that is a college football game, right?

A Yes.

Q And as a matter of fact, December 23rd, the date we are talking about, was a Monday night, that it wasn't likely perhaps that it was the Monday night football, professional game, but it was one of the bowl games, Houston was playing someone else in the bowl and it is on television, and you have indications throughout this record, do you not, that every time a game was on TV, that there was a greater instance of betting on that game by bettors. Didn't you see evidence of that?

A Yes, a TV game usually draws more action.

Q Right, okay. And that is because the novice bettor, while watching television, wants to root for somebody, and he doesn't feel he can root for somebody unless he has got something bet on them, isn't that true?

A Yes.

Q Some people just can't watch a TV ballgame without having the bet, is that correct?

A Yes.

Q You know bettors like that, all right. Now, from reading the transcript pertaining to December 23rd, is it not a fact that Grezo does not make one bet on Houston with D'Agostino, on that Houston College football game?

A I don't recall whether he does or not.

Q You don't recall. And if he didn't, assuming he did not make a bet on Houston, that the reason he didn't is because the line minus three Houston could not be broken anywhere with any other bookmaker, that it was a solid line, and when a line is solid, a bettor cannot bet the opposite way in order to catch a middle. Isn't that a possible explanation of that?

A It is possible, yes.

Q Page 144. That is on December 26th, towards the bottom of the page. There is an indication that Oklahoma State is playing that night, is there not?

A Yes.

Q All right. And as a matter of fact, can we assume that the bet was a college basketball game, all right?

A Yes.

Q Now, when D'Agostino says, "Oklahoma State went to 12," he means that Oklahoma was previously less than 12, correct?

A Yes.

Q Meaning now that the bettor has to give him more points on Oklahoma State, correct?

A Yes.

Q But possibly, the game was minus 10, that he has raised to 12, is that correct?

A It's possible, yes.

Q All right. When he mentions that fact to Grezo, Grezo said, "No kidding?" and D'Agostino says, "Yeah. I know you forgot to give it to me, huh?"

Now, isn't a very consistent explanation with that that when Grezo first learned that the line was minus 10, Oklahoma State, he didn't bet it, that then when he finds out that the game went to 12, he now wanted to bet D'Agostino Oklahoma State minus 10, the old odds?

A It is possible, yes.

Q And that D'Agostino was chiding him, telling him, yeah, I know I raised the odds, and now you are going to tell me you forgot to get that when you had to give me less points before, but too bad you didn't bet it the first time and that's it. Correct?

A That's correct.

Q All right. Further indication of inconsistent interests, isn't that correct?

A Yes.

Q Page 153. Now, isn't it true that a bettor who has access to two or three bookmakers has got a better thing going for him than a bettor who has only got access to one bookmaker?

A Usually, yes.

Q And that is because, again, of the difference in line, you bet the opposite in an effort to win the middle?

A That's correct.

Q All right. And there is an additional reason for that being more beneficial than just attempting middles, because the bettor then can shop around and get the better price by having access to two or three bookmakers?

A That's correct.

Q Right. It would be like you wanting to buy a tie. You see the same tie for $2.50 in Rochester and you see the same tie here in one of the little department stores for $1.50. As a result of shopping, you buy the tie you can get the better deal with, correct?

A Yes.

Q You have got to be foolish to pay $2.50 when you can pay $1.50, all right. Now, as a result of having that edge of having two or three different bookmakers, a bettor is fearful of losing one of his bookmakers, isn't that true?

A It is possible, yes.

Q So there is an unwritten law then, is there not, that there

is not, that when a bookmaker is obviously wrong in his line to his detriment, a bettor could conceivably tell him so?

A He can argue with him about it, yes. That didn't mean --

Q Not argue. Supposing that you have a bettor who checks with other bookmakers and finds out that the Buffalo-Boston game at Boston is minus six, and he calls a second bookmaker and he has got the game even, all right?

A Yes.

Q Now, there is an obvious mistake in the line, isn't there?

A True.

Q All right. And a bettor could be a good guy and tell him so.

A That could work two ways. He could inform him of that, or the bookmaker that has the line, the one he thinks it should be, may want to keep it that way for a specific reason.

Q But there would be occasions when a bettor, in order to keep in good graces with that bookmaker, may tell him look, your line is too low, you better give yourself more points on that. I just found out that it was minus six and here you have got it even and you are going to get crucified on that game if the other fellow's line is more accurate than yours.

A Another bookmaker would do the same for another bookmaker.

Q Consistent with a bettor, consistent with a bookmaker, right?

A That's correct.

Q All right. If a bettor is afraid he is going to lose his source when he has got to settle up with him, he wants his money, but he says, you know, he is still reluctant to throw it in his face that he won so much money from him because you don't want to lose him as a probable source.

Isn't that a reaction by some bettors? They bet a guy for $5,000 and win, now they are not going to go and say, give me the $5,000 you owe me, you sucker, you did it all wrong because that bookmaker would say all right, never call me again.

A I would think it would be the other way around. The bookmaker would be the one that would want to hold onto the customers.

Q But there are bettors and customers who want to hold onto bookmakers, too?

A It is possible, yes.

Q Because of the advantage we discussed, all right. Now, page 155, Grezo says, "Yeah. I am saying but, ah, I mean, he ain't mad he owes me three."

Now, is not a possible interpretation of that a bettor saying that he has won $3,000 from his

bookmaker, is that one explanation for that?

A 155 you say?

Q 153, I'm sorry, a quarter of the way down the page.

A Yes, that's possible.

Q All right. And at least we can both agree, at least on January 2nd, 1975, it would appear that Grezo is plus $3,000 with D'Agostino, correct?

A Yes.

Q All right. And plus means that Grezo has $3,000 in money coming, correct?

A Yes.

Q All right. Now, yesterday you indicated in your opinion that Mr. Grezo is conceivably a bookmaker, conceivably a writer, but more than a mere bettor, was predicated on an instance or two instances where Grezo advises D'Agostino concerning the line, is that correct?

A The advice that he gave was in two instances, but that was not all that I based my opinion on.

Q All right, it wasn't all. But at least we can agree that there were two instances where you say Grezo advised D'Agostino to change the line?

A Yes.

Q All right. These particular wiretaps cover a period beginning December 21st, 1974 on into the middle part of January 1975, some 40 or 45 days. There is evidence of

Grezo calling every day and placing wagers, is there not?

A Yes.

Q And on two occasions out of that 45, Mr. Grezo advised D'Agostino concerning a change in the line.

A That's correct.

Q And you would agree, would you not, that D'Agostino never gives him a line? Correct?

A That's correct.

Q He doesn't say, here is my line and repeats all of the games that D'Agostino gave him and gives him his own prices on that game, there is no evidence of that?

A He does compare the line he has with what D'Agostino gave him on one occasion, and he also said that he suggested to D'Agostino, take it off the board at five because he says, I am doing the same.

Q Okay, fine. I want to talk to you a little bit about that, too, Mr. Holmes. But let's clear it up now. A line is the price on a number of games, correct?

A It is the point spread, yes.

Q The point spread, all right. A bettor calls his bookmaker every day and the bookmaker gives him the line. That is how he makes his bets, is that correct?

A That's correct.

Q It is not unusual for a bettor to use the line, correct?

A Yes.

Q All right. It is not unusual for the bettor to then call other bookmakers and get a similar line, right?

A Yes.

Q And compare the line to determine where he is going to shop, correct?

A Bookmakers do the same thing, also.

Q All right, fine. Again, consistencies. Now, when you say that Grezo advised him on two occasions, suggested to him a different line, Grezo didn't suggest an entire line change, did he?

A A line is for one game.

Q He suggested one line change for one game?

A That's correct.

Q Right. Now, certainly, on that fact alone, you are not saying that Mr. Grezo conducted the business of Mr. D'Agostino?

A One of the facts is that he says, I am taking it off. A bettor would have no occasion to take any line off the board, or not to take wagers on it.

Q You are not suggestion though that a bettor who calls his bookmaker and suggests to him that he ought to change one price on one game is conducting his bookmaker's business, are you?

A The fact that he says to take it off.

Q Just answer my question. You are not suggesting that he

is conducting his bookmaker's business, suggesting to him line changes on one or two or even three different occasions?

A Not a line change, no.

Q All right. Now, on that game that you talked about seven and five, you do know specifically where that is? That was the Milwaukie game, wasn't it?

A Page 140.

Q Pardon me?

A Page 140.

Q At page 140, directing the jury's attention to the language beginning:

"D'Agostino: Washington plus seven and a half.

"Grezo: Yeah.

"D'Agostino: Plus seven.

"Grezo: Buck each. Take it off.

"D'Agostino: Yeah.

"Grezo: I heard it was five, now I, I'm going to take it off.

"D'Agostino: I heard two and one-half.

"Grezo: Now I didn't hear that."

Now, let's please note the time here, 6:46 p.m. on December 23rd, 1974. Right?

A Yes.

Q Okay. Now, an interpretation of that would be that Grezo is aware that another bookmaker has the Washington game different than D'Agostino, correct?

A Yes.

Q Let's keep this in perspective. Now, there is proof there that Milwaukie was playing Washington, correct?

A Yes.

Q And that Milwaukie, with D'Agostino, was the favorite minus seven.

A Milwaukie, yes.

Q All right. And there was evidence there that Grezo bet D'Agostino plus seven, plus seven and one-half. Is that correct?

A Yes.

Q So after he places the bet with the more favorable odds, he then tells D'Agostino, I heard it was five, change it. D'Agostino replies, I heard it was two and a half. Grezo says no, I heard five.

All right. Having in mind that language, supposing now that the line on that game was in fact Milwaukie minus two and a half, and that Grezo admitted that he knew the line was minus two and a half, okay?

A Yes.

Q Then there would have been a possibility, would there not that D'Agostino would have refused to have taken Grezo's

bet on Washington plus seven, plus seven and a half, because of the drastic change in the lines.

A It is feasible, yes.

Q All right. So the situation, D'Agostino says you can bet me Washington and I will give you seven and seven and a half points on $100 or $150 each bet. And Grazo says, I am going to give you that bet. After he gives the bet, he says, make it five. D'Agostino says I heard it was two and a half. Now, he has got to place the bet so he says for five, give it to me at your seven and a half. D'Agostino says, yeah, I'll take your bet.

Now, supposing that Grezo, just minutes before, knew that Milwaukie with another bookmaker was minus two and a half. Would that be a clear indication to you that Grezo was not being completely candid and truthful with D'Agostino?

A It's possible if that was the case.

Q If that was the case. So that when he tells D'Agostino, no, the game is not two and a half, it is five, and assuming that he knows this two and a half then, you would say then that definitely Grezo's interests and D'Agostino's were in conflict with respect to sharing any profits together, would you not?

A If he is another bookmaker, that would be the same thing, that would be in conflict.

Q All right. Now, assuming that a bettor knows that there is a difference among two bookmakers where one bookmaker has got Milwaukie minus seven and a half or minus seven, and the other bookmaker has Milwaukie minus two, right, now, wouldn't you agree that to bet on Washington, the opponent, plus seven, seven and a half, would be an excellent bet for a bettor to make?

A Yes.

Q Especially if he believes that that other bookmaker who is only giving up to his bettors, two points or two and a half points, is accurate?

A Yes.

Q Now, in that situation, a bettor may not want to divide his money by betting both sides. He may just bet two or three hundred dollars with what he considers to be a sure thing, so that if Washington wins the game or loses by less than seven, he is going to win the amount of the bet, two or three hundred dollars, and he doesn't have to give up any of that two or three hundred dollars to the other bookmaker by betting Milwaukie.

A Yes, sir.

Q Okay. And is there any evidence in the transcripts or in the evidence in this case that you may be personally aware of that the jury has not heard yet where D'Agostino changed the odds on Milwaukie by making it five?

A Not that I am aware of.

Q By the way, while we are on the subject talking about betting opposite, go to December 26th and I will try to give you the page as quickly as possible. You may know this transcript better than I, where Mr. Grezo bets Furman. It is page 147.

All right. Grezo bets Furman eight and a half and nine, buck each with D'Agostino, is that correct?

A Yes.

Q That means that he is betting -- well, you know, do you not, that the line was Furman minus nine?

A Yes.

Q All right. So that Grezo, if he wanted to bet on Furman, had to give up to the bookmaker a total of nine points, correct?

A Yes.

Q For $100, and then a second hundred dollars he had to give up only eight and a half to him, correct?

A Yes.

THE COURT: We will take our morning recess at this point.

(After a recess, the following proceedings took place.)

THE COURT: All right, proceed.

CROSS-EXAMINATION (Con't)

BY MR. PALMIERE:

Q Mr. Holmes, will you turn to page 147, about the middle of the page. Grezo bets on Furman minus nine, minus eight and a half at 7:15 p.m., correct?

A Yes.

Q All right. Now, assume that Furman was minus 10 with a bookmaker in Binghamton and that Grezo knew that at around 7 o'clock, and then after betting the Syracuse bookmaker, he then bets the opposite, assuming the opposite was George Washington, with Binghamton, plus 10.

Now, that would be an opposite bet, would it not?

A Yes.

Q All right. And that would be because of the difference in the odds, 10 as opposed to minus nine, minus eight and a half and there is an opportunity for winning the middle bet then.

A Yes.

Q Okay. Now, you said that much of what I brought up here is consistent with the activities of a bookmaker and equally consistent with being that of a bettor, correct?

A Yes.

Q Now, I believe we also said yesterday that the bookmaker gives his bettor who bets him a lot of action in a lot of

games, a half a point benefit on the odds, is that correct?

A Yes.

Q And that is an inducement for him to bet with him, that number of games, correct?

A Well, it is also a method of limiting how much action he takes on certain games at a certain point spread.

Q Now, a bookmaker who lays off to another bookmaker is one that is attempting to maintain a profit and reduce his chance of losses, isn't that correct?

A He rebets with another bookmaker, right, to reduce his chance of financial loss.

Q So the bookmaker then who accepts those lay-off bets knows that he is doing that first bookmaker a favor, correct?

A Yes.

Q In effect, that bookmaker who accepts the lay-off bets of the first bookmaker is, in effect, helping that first bookmaker maintain a profit for himself and reduce his risk, correct?

A Yes.

Q The bookmaker now who lays off to the second bookmaker, he is not helping him reduce his risk, is he?

A No, but it is increasing his volume.

Q Similarly, a bettor by betting a large number of games

with a bookmaker, does not help that bookmaker make a profit, but he does increase his volume, isn't that true?

A Yes.

Q Now, on page 147 there is an indication that Grezo bets Oakland, the Oakland football team, minus five and a half for X number of dollars, and also minus six for X number of dollars.

I believe it comes to a total of $600, correct?

A That's correct.

Q And does the transcript indicate that Oakland was going to be playing Pittsburgh that Sunday, the following Sunday?

A I don't know for sure.

Q All right. So here is an indication then of Grezo -- excuse me. Assuming that Oakland was playing Pittsburgh and it was a football game that was being played on Sunday following December 26th, '74, which was a Thursday, we therefore have an indication of Grezo betting on that game three days before the event was going to occur.

A That's correct.

Q All right. Going back now, we are going to talk about the consistencies between bookmaker and bettor.

Assuming for a moment again, that in betting D'Agostino 300 or 200 on each of these contests,

that Grezo's books were in balance to the extent of 600 on one side and $300 on the other side, and that when Grezo bet D'Agostino, he was taking 300 of that 600 and giving it to D'Agostino in order to prevent a loss on that particular game, assuming he was doing it.

A Yes.

Q Now, didn't we also say that a bookmaker who had accepted that kind of action on 17 or 18 games would be foolhardy to give any part of it to another bookmaker because of the vigorish he loses?

A Not unless he has too many bets on the other side. We don't know what action he took on the other side.

Q We don't know, all right. But let's just assume, can we, that you have got six and three, okay?

A Yes.

Q And Grezo takes three of the six and passes it off to D'Agostino, so now he has got a balance of three and three.

A Yes.

Q Insuring him at least of vigorish, a benefit for that particular game, correct?

A Correct.

Q But didn't we say that that is the kind of balance of action, a 900-dollar total bet on one contest divided three and six, that a bookmaker who has that kind of

action would be foolhardy to pass any of it off because he would lose the vigorish?

A In a theoretical situation, yes, that would be right.

Q Mr. Holmes, I am directing your attention to Government's Exhibit 17 which is in evidence, and that is a document that was prepared by you showing the gambling wagers made with D'Agostino both in the afternoon and evening of the date January 4th, 1975, correct?

A That's correct.

Q Now, on January 4th, 1975, do you recall that the line was first disseminated by D'Agostino at 12:30?

A Yes.

Q All right. And according to your computation here, the first batch of bets that were accepted by D'Agostino came at 12:37 p.m. when an unknown male called.

A That's correct.

Q Now, assuming that the unknown males shown in that particular exhibit are one and the same person, all right, how many different persons is it your opinion this document represents the wagers from on that date?

A 14, if all unknown males are the same. Correction, 13.

Q All right, 13. So that if you deduct Grezo's action which totals 1550 plus 400, or $1950 from the total afternoon action of 55-60, you come up with a balance of approximately $3610, is that correct?

A I guess so, yes.

Q All right. So it would be safe to assume then that from 12:37 when the line was first disseminated until 1:58 when BB-60 calls and places his bets for $120, that these 12 persons, that would be 13 persons, exclusive of Grezo, is that correct?

A Including Grezo, 13.

Q So 12 persons then were responsible for bringing to the book $3610, correct?

A That is just for this particular transcript, yes.

Q Right, right. And some of those persons could very well be bettors, is that correct?

A Probably are, yes.

Q All right. Now, Grezo's action brought in that he bet on the game came to $1950. Now, if that was a lay off by him totaling $1950 and that he was attempting to achieve an even balance in his books, then on that particular day with respect to all of the teams that he bet on, he would have had $3900 on one side and $1950 on the other side, assuming that when he laid off -- I'm sorry. By laying off $1950, assuming he was attempting to achieve a balance and he was laying off $1950, that the total action then that was taken in by him on that day from his customers would be 3900 plus 1950, or a total of $5850, correct?

A Yes.

Q All right. And is it not a fact that Grezo first receives the line at 12:36 that day?

A Yes.

Q And makes his last bet at 1:14 for $1550?

A Yes, for the morning session.

Q All right. So, assuming these facts to be true, that he was attempting to achieve an even balance by laying off $1950 of the 39 he had on one side of the contest as opposed to 1950 he had on the other contest, that it took him only 38 minutes to obtain wagers totaling $5850, and it took these other persons who may be bettors, but may also be agents, one and a half hours to report in $3610 in bets?

A He may not have done that. He may have --

Q But if the facts I am asking you to assume are accurate, then that time would be correct, would it not?

A That is not the case. That is a theoretic or a hypothetical situation.

Q Finally, I am asking you to assume though that these people indicated here are either bettors or agents. I am asking you to further assume that $1950 was laid off to D'Agostino representing a portion of $5850 in action, and that Grezo did this in 38 minutes as opposed to the other 12 reporting $3610 and taking them more than

two times the time it took Grezo, or an hour and a half.

A Well, there is --

Q That would be correct as to the time, wouldn't it, based upon that assumption?

A There was only nine individuals in the morning session, other than Grezo, and as you stated that, it is a hypothetical situation, that is what it would be.

Q All right. Now, going to the evening session beginning around 6:11, page 40 -- let's go to page 60. That is the first indication on that day that D'Agostino gives out the evening line, correct?

A Yes.

Q And he gives it to an agent, correct?

A Yes.

Q And there are nine persons whose names are recorded there exclusive of Grezo, is there not, assuming that the unknowns are the same person?

A Yes.

Q All right. So there again we have a situation, do we not, where to deduct the $5500 in action reported by Grezo from the total of the evening session of 85-25, the difference, or $2925, would be the action reported by nine individuals, exclusive of Grezo, to D'Agostino over a period beginning when the line was first obtained by the first person named therein to 7:40, which would be

a period of some what -- have we had that computed? Wait a second.

A An hour and a half, approximately.

Q I'm sorry. Let's see, 5:17 -- all right, 5:17. The first agent on page 60 received the line at 5:17. From 5:17 to 7:40, a period of two hours and 19 minutes goes by, and nine people reported in action, $2925, to Mr. D'Agostino. Is that correct?

A Yes, it is.

Q All right. And Grezo, at 7:01, and then again at 7:40, reports in a total of $5500 in action to him, is that correct?

A Yes.

Q Assuming then that he was attempting to achieve an even balance in his books and was passing out $5500 to D'Agostino, based on that assumption, would be then that Grezo had to obtain bets totaling $16,500 from customers of his, is that correct?

A Not necessarily, no.

Q Well, let's assume for a moment that he did bring in $16,500 and that his books were balanced to the extent of $11,000 here, 5500 here, and he was attempting to achieve an even balance in his books, and he gives out $5500 of this 11 to D'Agostino, assuming that.

A Yes.

Q All right. Then he would have had to have brought in these total bets of 11 and 55, totaling $16,500 in the time it took him -- from the time he received the line to the time he made his last bet at 7:40, correct?

A In a hypothetical situation, yes.

Q And as a matter of fact, the bulk of that action, $5300, was brought in by him at 7:01, isn't that correct?

A Yes, it is.

Q All right. So now, Grezo got the line himself at 6:24 as indicated by page 82 of the records, using pages 81 and 82 so you can get your time, if my assumption is correct, that he was laying off to achieve an equal balance to gain the vig, then he would have to have done that in about 37 minutes, 7:01 being the time, the occasion when he bet $5300, correct?

A As you stated it, yes.

Q All right. And he would have had to have done that kind of action three times, the $5300 or $15,900 in 37 minutes, is that correct?

A As you state it, yes.

Q Even though it took nine people some two hours and 19 minutes to bring in to D'Agostino $2925, assuming my hypothetical is accurate.

A Yes.

Q The facts that I have asked you to assume are accurate?

A Yes.

Q All right. Now, page 147, about a third of the way down the page, D'Agostino asks Grezo how many bets he is making tonight. Grezo says, "Three, please." D'Agostino says sure, buck a line is too close.

Do you see what I am talking about?

A Yes.

Q Now, isn't a fair interpretation of that again that D'Agostino knows that Grezo has access to another bookmaker and that the only reason why Grezo is betting only on three games that particular evening is because D'Agostino's line is identical or very, very close to the other bookmaker's?

A It could be he doesn't like any of the other games.

Q Do you want to go to that page on that day at 6:11 when the line was distributed to Mr. Grezo, that would be 6:11. I will give you the -- all right. That discussion by D'Agostino that Grezo is betting three games, and he tells him that because the line is too close and -- all right. Having that in mind now, you said not necessarily accepting my interpretation of the line with the other bookmaker is identical or almost exactly as D'Agostino's, is that correct, you are saying there could be another explanation for it?

A That's correct.

Q All right. Now, let's go to 6:11.

A Is that the date or time?

Q I will give you the page in one second. Page 143. All right. Now, just read down that line, if you will.

A (Witness looking at transcript.)

Q All right. Now, assuming further, assuming now that the line in Binghamton is as follows: Jacksonville even. That would be a difference in the line, wouldn't it?

A Yes.

Q All right. And, as a matter of fact, that is one of the games that Grezo does bet, Jacksonville against Penn State, he bets that with D'Agostino, doesn't he?

A Yes.

Q Okay. And if I ask you to assume for a moment that he also bet with Binghamton, Jacksonville plus two that day and bet Penn State with Syracuse plus two, plus two and a half, you would have to agree that that was an attempt to catch a middle?

A It sounds right, yes.

Q And as a matter of fact, Grezo did bet Penn State plus two plus two and a half against Jacksonville on December 26th, '74, is that correct?

A Yes.

Q All right. And that is the same game or same date when you and I both agree that D'Agostino -- strike that, that

Grezo bet Furman minus nine, minus eight and a half, with D'Agostino, correct?

A Yes.

Q Now, assuming that he also bet George Washington, Furman's opponent on that day, with Binghamton, plus 10, would you also agree that the spread between eight and a half and ten would be sufficient a spread to obtain a middle?

A Yes.

Q All right. Now, let's assume the rest of the line goes like this, that Binghamton's line is Oklahoma five. What is D'Agostino's?

A Oklahoma?

Q Yes.

A Five.

Q Kansas City, eight and a half?

A Eight and a half.

Q Rutgers, nine?

A Nine.

Q Manhattan, nine?

A Nine.

Q Tulsa, six?

A Six.

Q Detroit, three?

A Three.

Q Cleveland, three and a half?

A Three.

Q Is there any possibility of catching a middle when the spread is only half a point?

A Not hardly.

Q Chicago, seven?

A Six and a half.

Q Houston, four?

A Four and a half.

Q Golden State, seven?

A Six and a half.

Q Okay. Now, assuming that those odds I just told you on those games were in fact a bookmaker in Binghamton, would you then agree with me that D'Agostino knew that Grezo had contact with another bookmaker whose line was identical with his, and that is why Grezo was only betting two or three games with D'Agostino?

A I would agree that that is probably why Grezo was betting only the three teams, but as to whether D'Agostino knew it or not, that is conjecture.

Q Conjecture, notwithstanding the fact that D'Agostino says to him at page 147, "What do you want tonight?"

"Just three, please."

"Sure, a buck a line is too close."

A And Grezo denies it.

Q Pardon me?

A And Grezo denies it.

Q And when he denies it, assuming that he knew what the line in Binghamton was, then he was not telling D'Agostino the truth, was he?

A That's correct.

Q And another indication of inconsistent interests, is that correct?

A Yes.

Q By the way, let's get this crystal clear also at this point. I think we can speak about it generally. Based upon your review of the entire evidence in this case, isn't it true that there is absolutely no evidence at all where D'Agostino passes on bets or wagers to Grezo?

A Not in this transcript, no.

Q And that was the selected transcript that is being used by the Government in this case and which the United States attorney has shown to the jury, is that correct?

A That's correct.

Q Okay. Did you ever hear of the term "taking the lead"?

A Pardon me?

Q A bookmaker, the expression by a bookmaker asking his bettor, do you wish to "take a lead" in a game?

A I have heard it used, yes.

Q Do you know what it means?

A I believe that it means that he wants to take the early

line as opposed to waiting later on in the week.

Q And a bookmaker will give a bettor, a good bettor of his that opportunity, will he not?

A Yes.

Q Now, page 153 and 154, you do not see evidence of that where D'Agostino asks Grezo if he wants to take a little lead with the super bowl, and then there is a big discussion following that about the odds and what he, what D'Agostino is willing to permit Grezo to bet the game, and Grezo trying to get more beneficial odds for himself, isn't that true?

A You say 153?

Q Yes, 153, beginning with "Want to take a little lead with the super bowl?"

A Yes.

Q All right. And there, there is a discussion back and forth. D'Agostino wants to give it to him at three. Grezo only wants to give D'Agostino two on the team he is going to bet on, which would have been Minnesota, I believe.

A Yes.

Q And that is common for good bettors, frequent bettors of bookmakers to argue with them over the point spread, I can get it someplace else cheaper, why don't you do that here with me?

A It is also consistent with bookmakers.

Q Sometimes if he doesn't reduce it, he takes it to the other bookmaker and bets the opposite side with him, isn't that true?

A Yes.

Q On page 152, is there not an indication there that at that point for a particular period of betting, that Mr.Grezo was plus $3,005 with D'Agostino? That would be at the bottom of the page, "D'Agostino: No, 3,005 your way."

A Yes.

Q Okay. On 179, is there an indication there that D'Agostino tells Grezo that the north south football game, his odds on it are the north, minus one and that Grezo bets D'Agostino the south plus one, which would be his privilege to do so, would it not, the north being minus one, you can take the other side with a point, correct?

A Yes.

Q Now, if on that same day Mr. Grezo called his bookmaker up in Oswego and bet him the south minus two, would you agree that that would be a perfect opportunity for a middle?

A Yes.

Q And also on that day when Grezo bets the south plus one, he also bets New Orleans, doesn't he?

A Yes.

Q And aren't both of those bets made during the same call it was that D'Agostino gave him the line?

A He gave him the updated line.

Q Pardon me?

A Up-to-date line.

Q Which included New Orleans, did it not?

A Yes.

Q All right. So that at the same time the bookmaker is giving the bettor the line, the bettor bets them?

A Yes.

Q That was one time when Grezo didn't have to check on anything. He wanted to bet them because those odds were favorable to him?

A That's right.

Q On January 5th, 1975 at page 177, there is an indication on that day that Grezo is ahead of D'Agostino $4350, the middle of the page.

Grezo said, "So you got 43, 15 and three."

D'Agostino says, "Right."

THE COURT: I think we have reached our lunch hour.

MR. PALMIERI: Your Honor, just a couple more questions and I will be glad to end it at this point, really.

THE COURT: All right.

BY MR. PALMIERE:

Q A couple of questions with respect to the line, the Las Vegas line you were talking about yesterday, and you discussed how this individual would make it up, give it to the bettors to bet and to solidify the line, make sure it is a good line.

A Yes.

Q Now, a local bookmaker here can get his line from a bookmaker in Buffalo, New York, who got it from Las Vegas, isn't that true?

A That's correct.

Q And that could be common knowledge among bettors, that although he realizes that the line he has got comes from Vegas originally, that it is very conceivable that the line being given to him by his bookmaker is the Las Vegas line that came to his bookmaker through the bookmaker in Buffalo, it may have been a friend of the bookmaker in Syracuse?

A It is very possible.

MR. PALMIERE: I think that's all. Thank you very much, Mr. Holmes.

THE COURT: We will take our luncheon recess. Don't talk about the case. Half an hour.

(After a luncheon recess, the trial continued as follows:)

CROSS-EXAMINATION (Con't)

BY MR RYDELL:

Q Agent Holmes, you told Mr. Shanahan yesterday that you did not use any source for your opinions here except the composite transcripts and the tapes?

A That's correct.

Q So that you did not check or seek to determine what the Las Vegas line was from December 20th, 1974 until January 12th, 1975 independently from these tapes or transcripts?

A No, sir.

Q By the way, how many gambling cases have you worked on or been involved in in your career?

A Oh, in excess of 200.

Q And I assume that this would cover many cities all over the country?

A Yes, sir.

Q Now, from your work in these many cases and in many cities, wouldn't it be fair to say that bookmakers generally transmit a betting line, one to another?

A Yes.

Q For example, if a Mr. John Doe who is a bookmaker gets a line from his source, say, in Las Vegas or Buffalo, New York,

or Shreveport, Louisiana or Miami, Florida, he puts a line out, and let's assume that is in Indianapolis, Indiana, and that line is used for all of, maybe a half an hour. Bettors are calling in, possible lay-off bettors or possible bookmakers are calling in, and within a half hour that line is known all over the Indianapolis area. Would that be a correct statement?

A It is very possible, yes.

Q And as a matter of fact, isn't this how most lines are circulated in an area?

A I couldn't say for sure because I don't know how all lines are circulated.

Q All right. Not every bookmaker in town has an independent source in Las Vegas.

A That's correct.

Q Usually, one or two might, or wherever they get their line, and the others pick it up from somebody else?

A Yes.

Q All right. Did any of your work in these other cases or in these other cities indicate that betting lines do originate, for example, in Atlanta, Georgia, Miami, Florida, Buffalo, New York, Shreveport, Louisiana, Galveston, Texas, do you know whether any of those cities would originate a line?

A No, sir, I don't.

Q In giving your opinion that Louis Camerano was the line source for this gambling operation, you are basing that opinion upon the composite tapes and on the transcripts which purport to contain his conversations, correct?

A Yes, sir.

Q Now, in arriving at that opinion, you are assuming that Lou Camerano actually was the man who spoke on those tapes and who made that conversation, right?

A Yes, sir.

Q If in fact he were not that person, or if that voice identification was incorrect, then your opinion about him would be wrong?

A If that was the case, yes, sir.

Q And I believe you also stated that any bookmaking operation needs a current or a fresh line?

A Yes, sir.

Q You are familiar with the tapes of the transcripts allegedly involving Louis Camerano?

A Yes.

Q And these tapes involve conversations on January 4th, January 5th, January 11th and January 12th, 1975, correct?

A That's correct.

Q No other dates?

A None to my knowledge in the transcript.

Q And from December 20th, 1974 until January 3rd, 1975,

there are no calls in that transcript or on those tapes from him?

A No, sir.

Q So that it would be fair to assume that the man identified as Louis Camerano on those tapes was not involved in that gambling operation between those dates?

A After January 4th.

Q I asked you about the dates December 20th through January 3rd, 1975.

A I would have no knowledge if he was.

Q There was no indication of it on those tapes, is there?

A That's correct.

Q And isn't it a fact that during the latter part of December, in a bookmaking operation, that there are a lot of ballgames and football?

A Yes.

Q And you still have your pro football games going on?

A Yes.

Q And you have basketball going on?

A Yes.

Q Perhaps some other sports that that bookmaking operation might handle?

A Yes.

Q So that that is a busy period of time in any bookmaking operation?

A That's correct.

Q So that if you said that Mr. Camerano was a necessary part of that bookmaking operation and he was not involved in that bookmaking operation during those dates, that would not be a fair statement, would it?

A I base that statement on the fact, I believe, there is one call in there where they discussed this previous line source with which they were not happy with and they had a new one coming in on January the 4th.

Q But if that be so, it wasn't Mr. Camerano, obviously?

A After the 4th it was, yes.

Q Will you please answer the question.

Prior to the 4th, it obviously was not Mr. Camerano?

A That's correct.

(Defendant's Exhibits B and C marked for identification.)

MR. FISHER: May I take a look at those, counsel?

MR. RYDELEK: Yes.

MR. FISHER: Thank you.

BY MR. RYDELEK:

Q Officer Holmes, would you please look through Exhibits B and C, just generally to get an idea of what they are.

A Yes.

Q Okay. Now, will you tell the jury, just in brief, general language what is Exhibit B, the magazine?

A This has several articles on all of the major football teams, and I believe it is an analysis of what their capabilities are something to that effect.

Q It is a sports magazine?

A That's correct, Popular Sports.

Q And the title is Popular Sports?

A Popular Sports.

Q And that was the October 1975 issue?

A That's correct.

Q About the time that we are talking about here. I mean, that would be a current issue during the fall of 1975?

A Well, October as opposed to December.

Q All right. And give us a general description of what the other document, Exhibit C, is, Football News.

A It is Football News, dated August 24, 1976. It gives a draft analysis. It also gives an analysis by different authors on coaches, teams, schedules.

Q Again, this gives football information?

A Yes.

Q Now, are you yourself interested in sports, personally?

A To a certain extent, yes.

Q And have you seen magazines and articles and publications similar to these?

A Yes.

Q On the newsstands around the country?

A Yes.

Q And you know, or you will admit that they are common and offered for sale everywhere?

A That's correct.

Q Okay. To the general public?

A Yes.

Q Now, will you look at page 2 of Exhibit B, the magazine, and at the bottom, would you read the short portion which starts "Popular Sports, published --"

MR. FISHER: Objection, your Honor. The item is not in evidence. He is being asked to read it.

THE COURT: Sustained.

MR. RYDELEK: I didn't hear the ruling.

THE COURT: It is not in evidence. You are having him read from something that is not in evidence.

MR. RYDELEK: I will offer the magazine in evidence, your Honor.

MR. FISHER: Objection. It is irrelevant, outside the scope of the indictment.

THE COURT: Overruled.

THE CLERK: Defendant's Exhibit B received in evidence.

BY MR. RYDELEK:

Q Will you read the portion that starts "Popular Sports is published a number of times --

A "Popular Sports is published five times a year by CBS Publications, Popular Magazine Group, 600 Third Avenue, New York, New York 10016. John S. Schuler, President." All right?

Q All right, that's good enough. Now, going back to page one in that magazine which appears to be an advertisement, would you generally describe the type of ad that that is?

A The heading is the words, "Best football prediction service."

Q All right. Now, under the photograph of the man with the computer, will you read that portion with these seven-year results and then where the areas go?

A "We feed football connection data into the computer with the seven years result. A big percentage of 21 percent, we beat the Vegas spread 71 percent of the time. We beat the Vegas line 84 of 95 weeks."

Q And then in the lower right-hand corner of that page is there a place where people could subscribe and participate in this service?

A Yes, there is.

Q The words to the effect, I enclose so much. Please sign me up and send it by mail. Right?

A That's correct.

Q Now, will you please look at pages 8 and 9 in the magazine. On page 8 there are some locations with stars above and below, about two lines. Will you read that, please, about in the middle of the page.

A There is a picture here and --

Q Excuse me?

A You mean this one here?

Q Yes.

A "Correctly predict all seven of the pro playoff games versus the official Vegas line 100 percent."

Q And then on page 9, that is a continuation of that particular ad and that particular sports service?

A Yes, it is.

Q Okay. And at the bottom of page 9, just briefly, what is that?

A That is an application for Players, Incorporated, for a subscription to that service.

Q Will you read the part that says, "Please find enclosed, my name and address --"?

A "Please find enclosed, my name and address. I understand that you will send me your phone number so that I can call you any day, seven days a week, for your free college and pro football releases for the entire season absolutely free."

Q And this emanates out of New York City, the address?

A Yes, it does.

Q Will you look at page 13 of the magazine. Is this a similar type of advertisement?

A Yes, it is.

Q And at the head of this one it says, [illegible] - [illegible] - line?

A That's correct.

Q A seven-year record of better than 71 percent --

MR. FISHER: Your Honor, I object to this line of questioning. It is in evidence, it speaks for itself.

THE COURT: Sustained.

Q Does that ad mention a Las Vegas line?

MR. FISHER: Objection.

THE COURT: Sustained.

BY MR. RYDELEK:

Q Will you look at page 17. Is that a similar type of ad?

MR. FISHER: Objection.

THE COURT: I haven't heard the question yet.

Q Is that a similar type of ad?

THE COURT: Similar to what?

MR. RYDELEK: Similar to the others that we have been talking about.

THE COURT: Sustained.

MR. RYDELEK: Your Honor, my purpose in asking these questions --

THE COURT: Whatever your purpose, they are improper.

MR. RYDELEK: All right.

THE COURT: The document speaks for itself.

Q In your opinion as a gambling expert and being familiar with Federal laws concerning gambling, are these sports services which are offered in these documents unlawful in any way?

MR. FISHER: Objection.

THE COURT: Sustained.

MR. RYDELEK: That's all.

THE COURT: I will entertain a motion to strike that which is irrelevant.

MR. FISHER: So moved.

THE COURT: Strike it all.

MR. FISHER: Is the Court referring to the two exhibits?

THE COURT: Yes.

MR. FISHER: Thank you, your Honor.

CROSS-EXAMINATION (Cont'd)

BY MR. PAPPAS:

Q You have been here a long time and I will be very brief. Just one thing, preliminarily. Earlier you testified that

with regard to one of the defendants here, he had called in and asked for someone's balance, is that correct?

A That's correct.

Q Now, isn't that common sometimes for one gambler to call in and get another gambler's balance?

A The only time that that is allowed by a bookmaker is if that --

Q Is it common or uncommon?

A It depends on the status of the individual making the call.

Q But it can be allowed, is that correct?

A If it is his account, yes.

Q Or if it is a trusted friend?

A No.

Q All right. Now, you have also testified here that based upon the composite transcript and the composite tapes, Mr. Czerwinski is at least a writer, is that correct?

A That's correct.

Q And it is possible that he could be also a bookmaker, is that correct?

A No, sir.

Q That is impossible?

A It is not impossible. That is not my conclusion.

Q That is not your conclusion?

A That's correct.

Q All right. And you have also, based on that composite, I believe, in response to Mr. Fisher's question, indicated there are writers and bookmakers on the tapes, is that correct?

A Yes, sir.

Q And correct me if I misquote you here. You mentioned 76 as one?

A Yes.

Q Referring to your notes, if you would. And Adella was another?

A Yes.

Q And Lefty?

A Yes.

Q And the Devil?

A That's correct.

Q And BB-60?

A Yes.

Q And VL?

A That's correct.

Q All right. Now, calling your attention to just one of them so we can be brief, number 76.

A Yes.

Q Would you refer to page two of the composite. Is that one of the calls from 76?

A That is a call from 76, that's correct.

Q And basically, that is about four lines, and what he is doing, he is asking if the line is in?

A That is correct.

Q And he is being told it is too early?

A Right.

Q And that is consistent with either a bettor or a writer or a bookmaker, isn't that correct?

A That's correct.

Q Now let's turn to page 50. Now, would you just examine the conversation briefly, if you wish.

A Yes.

Q All right. Now, in that conversation, I believe, in the early part of it, 76 calls in and finds out that the basketball game has already started, is that correct?

A Yes.

Q And he is given the odds, I think it was 11 and Maryland, is that correct?

A That's correct.

Q And D'Agostino tells him it is 10 to 10 right now.

A Yes.

Q Indicating he was probably watching it on television.

A Yes.

Q And he said, so go ahead and bet. That was more or less what he said, is that correct?

A Yes.

Q And the man bets on him?

A That's correct.

Q And then he bets on the west?

A Yes.

Q In the football game, correct?

A Yes.

Q And then finally they discuss a game that 76 bet the night before, is that correct?

A That's correct.

Q And he is informed that he lost?

A Yes.

Q Now, in that conversation, that conversation is very consistent with a bettor's conversation, is that correct?

A Also a writer, yes.

Q All right. But is there anything at all in that conversation, just coupled with the previous conversation you read, that would give you any indication that he is anything but a bettor?

A No, sir.

Q All right. Now, let's turn to page 87, and again we have 76 calling, is that correct?

A That's correct.

Q And on that, he asks for the Syracuse line that night, is that correct?

A Yes.

Q And he indicates he will call back?

A Yes.

Q And there is nothing on that call to indicate that he is anything but a bettor, is that correct?

A That's correct.

Q And I believe they were -- assuming those are the only three calls on this composite dealing with 76, wouldn't you have to say that you were incorrect in your conclusion in your opinion that he is a writer or a bookmaker?

A No, sir, because I made the mistake in saying all those that I named.

Q I want to know the answer to my question. Based on this composite, you testified you based your opinion on, wouldn't you be incorrect based on that?

A For those particular calls, yes.

Q And those are the only ones in this composite, aren't they?

A Yes, sir.

MR. PAPPAS: No further questions.

REDIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Holmes, on what did you base your conclusion that 76 was something other than a bettor?

A There were other calls on other tapes that I used in determining those other six or seven individuals that were previously mentioned.

MR. PAPPAS: Your Honor, I object. None of those are in evidence. We have got this composite in evidence and he testified to that, and I object to any --

MR. FISHER: No, your Honor, he is talking about the original tapes which have been moved into evidence, and he was reading from his lab report which contained that analysis.

THE COURT: Overruled.

BY MR. FISHER:

Q And does that concern BB-60, the one Mr. Rinaldi asked yesterday about?

A Yes.

Q Is that the same with reference to the other unidentified code named persons that you listed as something other than bettors?

A That's correct.

Q Now, from what did you base your conclusion that the person identified as Grezo is something higher than a bettor, either a writer or a bookie?

A There are several calls where it is indicated that Grezo is talking about wagers he has accepted from his accounts. An example would be on page 147. Grezo tells D'Agostino that, "I am loaded on the game. I need three each." Meaning he wants to lay off 300 because he has got too

much bet on it.

Q Excuse me. Did you say page 47?

A 147.

Q I'm sorry, 147. Go ahead. You said 47 at first.

A Excuse me, 147. And after D'Agostino accepts the bet reluctantly, and then he tells Grezo to take it off his list, that he is through with the game. Meaning he is not going to take any more from him on that game.

Q All right, sir.

A Another example would be on page 164. Grezo asks D'Agostino for another buck at 12. He makes a statement, "I'm getting all Notre Dame." Meaning he is taking wagers, and all the wagers that are coming in are coming in on Notre Dame.

On page 166, Grezo comes back and asks for another buck on Notre Dame. D'Agostino says, "Forget it, I'm jammed." Grezo says, "Me, too, I'm jammed."

Grezo says, "Give me another half. Get me out of the hole." Meaning that he has got too much on Notre Dame.

Q Too much of his own betting action?

A Wagers that he has accepted. Page 175. Grezo makes a statement, "Another buck on Golden State. They're all betting the same game here."

And there are a couple of other instances.

Q Now, did you find any indication in your analysis of these transcripts of whether or not D'Agostino was setting any kind of betting limit for Grezo?

A Yes, on a couple of occasions he repeated to Grezo that his limit was 150. Occasionally he went over it, but in fact there was one conversation where they had an argument when D'Agostino lost heavily with Grezo's wagers, and he says, "I've lost 150 more than I was allowed to lose anyhow."

Q Now, this limit setting, this is common among bookmakers?

A Yes, it is.

Q That is from one bookmaker laying off to another?

A That's correct.

Q Where would one bookmaker do that?

A If one bookmaker is knowledgeable and has a reputation of winning quite a few of his wagers, the bookmaker he lays off to is going to limit that bookmaker to the amount of wagers he can place.

Q Now, with respect to Mr. Palmiere's questions about playing the middle, is that common from one bookmaker to another?

A Well, a bookmaker on his own, if he is a sports enthusiast and likes to wager and challenge with middling, will go out and attempt to middle, get lines from different bookmakers, place wagers, and yet he will

still accept wagers on his own and relay some of those wagers. So there is two different functions that he will perform on that particular occasion.

MR. FISHER: No further questions, your Honor.

MR. RINALDI: I have two questions.

RECROSS-EXAMINATION

BY MR. RINALDI:

Q Mr. Holmes, what you have testified to in the last couple of days, I take it that you have never personally heard Lou Camerano's voice in person?

A That's correct.

Q And would it be correct to say that when you made your opinion of Lou Camerano that he is the line source, that you are not saying that it was his voice?

A I believe I predicated my statements by the fact that the transcripts indicated the individual as being so and so.

Q Right. But I am saying that when you are saying that in your opinion he is a line source, you have never heard his voice, personally?

A That's right.

Q You are basing it solely on what you have heard on the tapes?

A That's correct.

Q You are not telling us that you are saying that it is

actually his voice?

A That's correct.

MR. RINALDI: Thank you.

RECROSS-EXAMINATION (Cont'd)

BY MR. PALMIERI:

Q In the redirect examination, you were discussing Grezo on one particular day telling D'Agostino that he was loaded on the Notre Dame game, is that correct?

A I believe there are two different occasions, yes.

Q One day where Notre Dame was involved and also the same day was the day that Golden State was involved, or are those two separate dates?

A That's correct.

Q There are two separate dates there?

A Excuse me, I will check and see if I can get the date for you.

No, they were the same date.

Q Same date, all right. And now, you talked about limits, and you indicated that it is common for a bookmaker to limit a bookmaker who is betting in to him, is that correct?

A Yes, it is common.

Q And isn't it also common for a bookmaker to limit the bets of his regular bettors coming in to him, also?

A Yes, it is.

Q All right. Now, if Grezo was betting the opposite of Notre Dame with another bookmaker, who had his odds, let's say Maryland, Maryland playing Notre Dame now, Maryland minus 10 with one bookmaker, is that correct?

A Yes.

Q That means Grezo, in order to bet that other bookmaker, would only have to give 10 points, is that correct?

A Yes.

Q With D'Agostino, if he wanted to bet with Maryland, he would have to put up 12, he would have to give -- wait a second. If Grezo wanted to bet Notre Dame -- strike that. Maryland, Notre Dame's opponent, with D'Agostino, then Grezo would have to give up two more points, wouldn't he?

A If he wanted to bet Maryland?

Q If he wanted to bet Maryland with D'Agostino -- wait a minute, let's go through this again. I'm very sorry. This is where the confusion comes in.

If Grezo calls his bookmaker, let's assume up in Oswego or wherever, and he bets Maryland minus 10, with that bookmaker, in other words, he is betting the favorite and he is only giving up 10 points to that bookmaker, is that correct?

A Yes.

Q All right. Would D'Agostino, D'Agostino has the game

Maryland minus 12, meaning that Grezo, if he wanted to bet Maryland with D'Agostino, would have to give up 12 points, is that correct?

A That's correct.

Q All right. So, now, if that was the case, that Grezo had already bet another bookmaker by selecting Maryland, the favorite, and only giving up 10 points, and D'Agostino said to him, I will give you 12 points or 12-1/2 points if you will bet Notre Dame, doesn't that give Mr. Grezo an excellent opportunity to catch the middle?

A Yes.

Q Right. So that type of bet would be consistent with a bettor, correct?

A Yes, or a bookmaker.

Q Or an independent bookmaker, what have you.

A Or a bookmaker, right.

Q All right. But it is at least consistent with either or both?

A Yes.

Q All right. Now, supposing that Mr. Grezo had bet $400 with another bookmaker by taking Maryland minus 10 and D'Agostino's limit was $150 on the same game --

A Yes.

Q Now, as an inducement for D'Agostino to accept more than $150, is it conceivable that a bettor would tell D'Agostino

I'm loaded, in order to get him to take as much action as he bet someplace else to give him an opportunity for a middle?

A Not in my opinion, no.

Q Not in your opinion, but you certainly have found indications of it in this record where Mr. Grezo was not always completely candid with Mr. D'Agostino, haven't you?

A It is feasible, yes.

Q So that if the point spread was sufficient, a bettor might say anything over the telephone to his bookmaker in an inducement to get him to take a particular bet desired by the bettor, wouldn't you agree to that?

A No, I would not.

Q You would not. And on all these days, starting on December 21st and ending the middle of January 1975, it is on that one single day that you now tell this jury there is evidence of Mr. Grezo saying he is loaded?

A No, sir, I have 10 different situations, portions of conversations that led me to that belief or opinion.

Q The only facts or language that you demonstrated just a moment ago to Mr. Fisher was the Notre Dame game where he said he was loaded and the Golden State game where he also made the same claim to D'Agostino, is that correct, you only told us about those two particular games?

A That's correct.

Q All right. And those two particular games totaled maybe approximately $600, would that be a fair statement?

A I don't know, I don't have the figures.

Q And isn't it a fact that over the entire period of time beginning December 21st and ending in mid-January 1975, that Mr. Grezo's wagers with D'Agostino exceeded $34,000?

A I have not totaled his bets separately, so I couldn't say.

Q But at least on the two days, January 4th and January 11th, we know of some $5500 on each day?

A Yes, sir.

Q And you indicated that it is common for a bookmaker to attempt middling, is that correct?

A I said it would not be unusual for a bookmaker who is a sports enthusiast and likes betting to bet as a regular bettor would and try the middle.

Q All right. In that case, when an independent bookmaker bets two different bookmakers in an attempt to obtain a middle, then you would agree, would you not, that in spite of that bookmaker being known as a bookmaker, that that particular bet he is wagering at that time represents his own funds?

A Not necessarily.

Q In other words, we don't call bookmakers bookmakers because they have been known as bookmakers, but we look at the facts of a particular case to determine whether or not

the facts exclude all other conclusions, do we not?

A Can you repeat that?

THE COURT: I will sustain an objection to it, although one isn't made. It asks for a legal conclusion.

Q When a bookmaker attempts to bet two different bookmakers by placing a middle wager with two different bookmakers, you told Mr. Fisher that he likes to gamble, isn't that correct?

A It is conceivable, yes.

Q All right. And isn't it also conceivable then that when he is doing that, he is using his own credit and his own funds?

A Not necessarily. An investor doesn't use their funds when they invest money for other people like a banker or investment company.

Q All right. When he tries for a middle bet, he is doing the same thing as a bettor?

A When he is trying to do what?

Q When he is attempting to place a middle wager, he is actually betting, isn't he?

A That's correct.

THE COURT: He may or may not be betting for his own profit, it might be a customer?

THE WITNESS: That's correct.

Q Now, do you have your opinion letter with you that you sent to Mr. Fisher?

A Opinion letter?

Q Yes.

A What is an opinion letter?

Q Do you have your report, your opinion report on this case (handing)?

THE CLERK: Defendant's Exhibit D marked for identification.

Q And now, I show you Defendant's Exhibit D for identification which purports to be your opinion letter to Mr. Fisher concerning the opinions that you rendered in connection with this case based upon a certain information that you had, is that correct?

A This is my report of evidence I examined at that time that that was written.

Q All right, fine. And this report was made by you October 31st, 1975, some nine months following the termination of electronic surveillance in this case, is that correct?

A Yes, sir.

Q And when you made this report, is it not a fact that you had examined information supplied to you from the transcripts up to the period of time ending January 11th, 1975?

MR. FISHER: Objection. This is beyond the scope of redirect.

THE COURT: I will allow it for a little while. It is beyond the scope.

MR. PALMIERE: I just have one or two other ones.

THE COURT: This trial has to come to an end at some time, though.

MR. PALMIERE: That's true.

A What was the question?

Q Did you have available when you made this report in October, the transcripts to and including January 11th, 1975?

A That's correct.

Q And is it true that the only reference that you made concerning your opinion of Mr.Grezo is indicated on the last page of that document, is that correct?

A That's correct.

Q All right. And the portion of the last page referrable to Mr. Grezo was the very first paragraph -- I'm sorry, first and second paragraph, is that correct?

A Yes.

Q Now, in the first paragraph of that report, do you not state the following --

MR. FISHER: Objection, not in evidence.

THE COURT: Sustained.

MR. PALMIERE: I offer it, your Honor, in evidence.

MR. FISHER: Objection, irrelevant and beyond the scope of redirect and hearsay.

MR. PALMIERE: Your Honor, it can't be hearsay, it is his own opinion.

THE COURT: Would you leave that to me?

MR. PALMIERE: I'm sorry, your Honor.

THE COURT: Overruled.

(Defendant's Exhibit D received in evidence.)

BY MR. PALMIERE:

Q Do you not state in your opinion here concerning Mr.Grezo, the following: "Grezo is a bookmaker and wagers a large volume of money on numerous games with D'Agostino. For example, in UC 5 (volume 3)7:31 PM January 11, 1975 conversation, Grezo wagers $4500 on 18 basketball games. There were 58 basketball games scheduled for January 11, 1975." Did you make that statement?

A That's correct, I do.

Q All right. And is it not true that nowhere in that opinion letter did you say that you base your opinion Mr. Grezo was a bookmaker based upon the conversations that you testified to a moment ago concerning the language, "I am loaded"?

A I don't put everything in a report that I make my decision on.

Q But at any rate, you left that out of your report then, is that a fair statement?

A Intentionally, I left it out, yes.

Q And isn't it a fact that you agreed with me earlier in this case that you do not classify a person a bookmaker merely because he bets a lot of money spread out over a number of games?

A That's correct.

MR. PALMIERE: That's all I have.

MR. PAPPAS: I have two questions, your Honor.

THE COURT: I think we have about exhausted this witness's knowledge on this subject unless some of us plan on going into the business ourselves.

MR. PAPPAS: I just have two questions that I want to ask.

THE COURT: I will limit you to five minutes.

MR.PAPPAS: I will be much less than that, your Honor.

RECROSS-EXAMINATION (Cont'd)

BY MR. PAPPAS:

Q Mr. Holmes, when I questioned you earlier, you indicated to me that in your opinion, my client, Raymond Cierwinski, was a writer and not a bookmaker, is that correct?

A At least a writer, yes.

Q At least a writer. And I specifically asked you if he could be a bookmaker and you said no.

THE COURT: This is repetitive of what you have already done, Mr. Pappas.

MR. PAPPAS: Your Honor, this report was not in evidence prior to this time, and I have one more question after this.

Q Is that correct?

A Yes.

Q That is what you told me?

A Yes.

Q Yet, in your report, do you characterize him as a bookmaker who obtains the line from D'Agostino and gives sports information, didn't you characterize him as such?

A That report is based on more evidence than what this transcript is. That is what my testimony is on, is this transcript.

Q All right. But when I asked you the question, you said in your opinion no, is that correct?

A No what?

Q That he could not be a bookmaker?

A No, I said he was at least a writer, but not exclusive of a bookmaker. I am saying at least a writer.

MR. PAPPAS: I won't go any further.

MR. FISHER: No questions, your Honor.

THE COURT: All right, you are excused.

MR. FISHER: Your Honor, the Government is ready to rest except for two points. We ask the Court to take judicial notice of Section 225 of the New York State Penal Law.

THE COURT: I will notice it.

MR. FISHER: And we ask the Court to take judicial notice of the fact that in January 1975 there were the three-hour time zone differences from Las Vegas, Nevada and Syracuse, New York.

THE COURT: I so take notice.

MR. FISHER: The Government rests.

THE COURT: The jury may take a short recess.

(Jury leaves courtroom.)

THE COURT: All right, Mr. Shanahan, I will hear the motions.

MR. SHANAHAN: If the Court please, at this time, on behalf of the defendant, Ebare, I move for

a dismissal of the first two counts of the indictment upon the ground that the Government has failed to establish the elements necessary to be established in connection with each of those two charges and upon the ground that they have failed to make a prima facie case or offered sufficient evidence to warrant the submission of those charges against that defendant to the jury.

THE COURT: Denied.

Mr. Weinstein?

MR. WEINSTEIN: Your Honor, at this time I would move for a judgment of acquittal on behalf of the Defendant Beach on the grounds that the Government has failed to prove each and every element with reference to the first two charges in the indictment, that they have not established a prima facie case sufficient to put to a jury.

THE COURT: Denied.

Mr. Rinaldi?

MR. RINALDI: Your Honor, on behalf of Defendant Joseph D'Agostino, I would like to make the same motion Mr. Shanahan did with respect to counts 1 and 2, and I would also like to move for dismissal of counts 3, 4 and 5 on the ground that the Government has failed to meet the burden of establishing a

prima facie case sufficient enough to submit it to the jury.

THE COURT: Denied.

Mr. Palmiere?

MR. PALMIERE: Your Honor, the defendant moves, pursuant to Rule 29A of the Federal Rules of Criminal Procedure for a judgment of acquittal on the grounds that the evidence, given full weight to the right of the jury to determine credible weight of the evidence and to draw just inferences of fact, do not fairly conclude guilt by reasonable doubt based upon the Government's proof in this case. That is with respect to all counts, counts 1, 2, 3, 4 and 5.

THE COURT: Denied.

MR. PALMIERE: And in particular, your Honor, I would like to just say that with respect to counts 3, 4 and 5 where my client is charged as a principal, that he aided and abetted in the concilitation of wagering information, that I state, your Honor, that there was absolutely no proof in this case, as I view it, that supports that he aided and abetted D'Agostino or Camerano or anyone else in the facilitation of this information over state lines. If I may, your Honor, the only evidence I see

in this case would be his knowledge that his line was coming from Las Vegas.

THE COURT: Well, he doesn't have to have interstate facilitation in order to be an aider and abettor.

MR. PALMIERE: He has to in some way aid and abet, counsel, command, importune D'Agostino or Camerano in obtaining or the giving of that line information, and I don't think awareness -- the awareness that a particular defendant knows that another defendant may be committing a crime does not involve him in the commission of that crime.

THE COURT: There is more than an awareness here, surely. There was evidence which the jury could find he facilitated in the crime.

MR. PALMIERE: Your Honor, I point out to the Court that one paragraph, that one report portion of the transcript on January 4th, 1975 at 11:44 as being really the only evidence in this case that he was even aware of this conversation being made in interstate commerce. There was nothing in that that says, well, go get it, or you know, let's have it. Or I just don't see where he is aiding and abetting, where he has an interest, a peculiar interest in obtaining this particular line.

THE COURT: What do you say?

MR. FISHER: Your Honor, we have proved that he discussed the line with D'Agostino. They had problems about the line and he gave advice back and forth. They were giving each other advice, that is why they brought in Mr. Camerano before. Mr. Grezo accepted the line that came from Camerano and placed wagers thereafter on that line. And in that way, he was facilitating it. The cases that I have cited in my trial brief support that.

THE COURT: I think there is sufficient evidence to deny the motion.

MR. PALMIERE: Exception, your Honor.

MR. RYDELEK: Your Honor, on behalf of the Defendant Louis Camerano, I would join in the motions made by Mr. Rinaldi and by Mr. Palmiere based on the same grounds stated by them.

THE COURT: Denied.

MR. PAPPAS: Your Honor, I would join on behalf of the Defendant Czerwinski in Mr. Shanahan's motion.

THE COURT: Denied. Is there to be defense now? Let's go in order.

Mr. Shanahan?

MR. SHANAHAN: I have just one exhibit

that I would like to offer.

THE COURT: Mr. Weinstein?

MR. WEINSTEIN: We have no defense.

THE COURT: Mr. Rinaldi?

MR. RINALDI: None, your Honor.

THE COURT: Mr. Palmiere?

MR. PALMIERE: There will be no defense by the Defendant Grezo.

THE COURT: Mr. Rydelek?

MR. RYDELEK: No, sir, we have not.

THE COURT: Mr. Pappas?

MR. PAPPAS: No defense, your Honor.

THE COURT: Then we are ready to start summations, I take it.

MR. SHANAHAN: Your Honor, I think that I would be speaking for everyone. We would appreciate starting on Monday morning, rather than this afternoon.

THE COURT: All right. I have two requests to charge here from the defendants, and I am denying both in the form in which you request them.

But I will charge the substance of it on count 2, but not on count 1, and I put these rulings on the top of your request.

Do you want a charge on the failure of the defendants to take the stand or not?

MR. SHANAHAN: Yes, your Honor.

MR. WEINSTEIN: Yes, your Honor.

THE COURT: You want me to charge it.

Do any of you have any exceptions to the Government's request to charge?

Before we get into that, let's dismiss the jury and you can get your stipulation in then.

All right, bring the jury in.

(Jury enters courtroom.)

MR. SHANAHAN: If the Court please, at this time I would like to read a stipulation into the record.

"On January 6th, 1975, surveillance indicated that at 12:43 p.m., D'Agostino's vehicle was observed parked in front of the Eastwood Sports Center, 2912 James Street, Syracuse, New York. At 2:19 p.m., Ebare and Beach entered the Eastwood Sports Center, and that at approximately 2:35 p.m., they and D'Agostino left the Sports Center. During the period between 12:43 p.m. and 2:35 p.m., D'Agostino was observed seated at a table next to the windows at the snack bar at the Sports Center, and was joined by Ebare and Beach on their arrival. After leaving the Sports Center, Ebare and Beach proceeded to Jamescrest Apartments, 1072 James Street, where they remained until 3:58 p.m.

when they then drove to the Earl Insurance Company office at 829 North Salina Street, Syracuse. They entered that office at 4:03 p.m. and departed therefrom at 4:11 p.m. when surveillance was discontinued. When D'Agostino left the Sports Center at 2:35 p.m. he drove his car from the location where it had been parked and he was not followed."

That, if the Court please, is the extent of what I desired to offer on behalf of my client.

THE COURT: Do you rest, Mr. Shanahan?

MR. SHANAHAN: I do rest.

THE COURT: Do you rest, Mr. Weinstein?

MR. WEINSTEIN: Yes, your Honor.

THE COURT: Mr. Rinaldi?

MR. RINALDI: Yes, sir.

THE COURT: Mr. Palmiere?

MR. PALMIERE: Yes.

THE COURT: Mr. Rydelek?

MR. RYDELEK: Yes.

THE COURT: Mr. Pappas?

MR. PAPPAS: Yes, sir.

THE COURT: Does the Government rest?

MR. FISHER: The Government rests, your Honor.

THE COURT: All right, the jury may be

excused now till Monday morning at 10 o'clock.

Keep an open mind, wait until you have heard the summations of the lawyers and the instructions of the Court. I expect it will take most of Monday in the hearing of summations and then it will be the Court's plan to instruct you on the law Tuesday morning.

So, keep an open mind till the whole trial is over with, including the summations and the Court's instructions on the law. Have a nice weekend now. Don't talk about the case; don't let anybody talk about it with you.

(Jury leaves courtroom.)

MR. FISHER: If the Court please, could I bring up one point?

THE COURT: Yes, sure.

MR. FISHER: I would ask the Court for clarification as to the extent of the Guzek opinion if you plan to charge it.

THE COURT: I haven't prepared it yet.

Otherwise, I would be happy to give it to you. I will charge the substance of what it is. I don't think it is so esoteric that you can't understand it. The mere fact that they lay off some bets occasionally, the mere fact that they place bets for another occasionally

isn't enough in itself. The mere fact that they change line information isn't enough in and of itself, that there must be a consistent, substantial, a regular pattern, on-going business, single business, not five separate businesses.

I will charge it.

MR. FISHER: Your Honor, I would take exception to that and ask permission to submit the order.

THE COURT: You can appeal.

MR. FISHER: Your Honor, the cases in my trial brief which I have already cited --

THE COURT: I have read your cases. That is what I am going to charge.

MR. PALMIERE: Your Honor, may I ask for a clarification? I am clear on the additional charge number one. With respect to the additional charge number two that I requested that has been denied by the Court.

THE COURT: Well, I'm sorry, I didn't get to that, I'm afraid. I will not charge it in that form. I will charge on aiding and abetting, and obviously provide that he must intend to promote the crime.

MR. PALMIERE: How about the theory of

my contention that if he is a bettor, he doesn't commit any crimes?

THE COURT: I will charge that a mere bettor doesn't commit any crime.

MR. PALMIERE: has the Court had an opportunity to look at my formal requests?

THE COURT: The only requests I have received from you, Mr. Palmiere.

MR. PALMIERE: I gave you a whole booklet Monday.

MR. FISHER: Those are the ones you looked at in chambers on the first day, your Honor. You denied those at that time.

MR. PALMIERE: No, he denied the specific request I asked for the jury selection.

THE COURT: Let me see it. I don't recall even seeing it.

MR. PALMIERE: The first three I know the Court is going to charge, but 14 and 15, with respect to theory defense, bettor situation.

THE COURT: I haven't seen these before, Mr. Palmiere.

MR. PALMIERE: Your Honor, I gave it to you Monday.

THE COURT: Where did you give it to me?

MR. PALMIERE: I gave you two booklets like this. One was requests for jury voir dire and one was this.

THE COURT: You handed them to me?

MR. PALMIERE: Yes.

THE COURT: I didn't see these.

Well, obviously, I am going to give one and two, but not in that form.

I will give three, but not in that form.

Four, I will give, but not in that form.

Five, but not in that form.

I don't have to give six, it is unnecessary.

I will give seven, but not in that form.

Eight, I will give, but not in that form.

Nine, substantially in that form.

I will charge them that they will have to consider each defendant, each count separately as you request in ten.

I will give the substance of 11.

I will give the substance of 12, not necessarily in that form.

I will charge the substance of 13.

I will not give 15. You sum up. No, 15 is perhaps a good argument interwoven with law.

I am not going to give it in that form.

MR. PALMIERE: But the distinction, your Honor, between player --

THE COURT: I will charge the distinction between a player or a conductor or a supervisor and so on. I will charge the substance of 16.

Wait a minute. I would not charge the second paragraph of that.

I will charge that mere association is not enough. You must know the conspiracy and join it.

I will not charge on membership or mere association in the form which you ask it.

I am not at all -- no, I decline 16 in the form in which you request it.

MR. PALMIERE: Your Honor, could you please tell me how you are going to define the word player and bettor?

THE COURT: I will define it in accordance with the New York Penal Law.

MR.PALMIERE: Are you going to indicate that it must be a casual thing? I sort of detect from some other language of the Court --

THE COURT: It must be casual, but it must be on a regular basis, more or less regular basis.

MR. PALMIERE: And he can still be a player, even though he bets every day?

THE COURT: Yes, that is true I will define player as it is in the New York law.

MR. PALMIERE: But I just would hope the Court would not give the impression to the jury that only players are excluded under 1951, are those players who do it on a casual basis.

THE COURT: No, I don't intend to do that. It isn't my intention.

Is this an extra copy of these?

MR. PALMIERE: Yes, your Honor.

Also, I have got an additional request. On the Guzek theory, the Court said he would charge the Guzek theory, but not in the precise form I requested it, only on count 1.

Now, if an independent bookmaker, your Honor, is really independent of the gambling business and he therefore does not conduct the gambling business of the business, then under --

THE COURT: It doesn't follow. We can't agree. He doesn't ever have to place a bet. Never has to commit the substantive crime, that is fundamental, to be a member of a conspiracy.

MR. PALMIERE: If the jury concludes

he is an independent bookmaker --

THE COURT: They can still find that he made an agreement.

MR. RYDELEK: Your Honor, after I concluded my cross-examination of Officer Holmes, Mr. Fisher said something, and I was sitting down and I didn't hear what he said. There was some objection that he made, and I don't know whether you excluded as evidence the magazines that I offered. I would like a clarification.

THE COURT: Yes, I did, I struck all of his evidence about the magazines as irrelevant.

MR. RYDELEK: Previous thereto, I had offered the magazine. It was accepted. Now I am to understand --

THE COURT: I struck it.

MR. RYDELEK: It is no longer accepted?

THE COURT: That's right, out.

Any specific objections to the Government's requests to charge?

MR. WEINSTEIN: No, your Honor.

THE COURT: You all have received them?

(No response.)

THE COURT: I take it there aren't any.

(Proceedings adjourned.)

* * * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA, Plaintiff, - against - SAMUEL L. EBAIE, also known as "Sam"; JOSEPH T. D'AGOSTINO, also known as "Joey"; RICHARD MICHAEL BEACH, also known as "Harpo"; CHARLES P. GREZO, also known as "Sonny"; LOUIS M. CAMERANO; and RAYMOND CZERWINSKI, also known as "Baldy", Defendants.	75-CR-86

CONTINUATION OF PROCEEDINGS in the above-entitled matter came on before the United States District Court, Northern District of New York, Auburn, New York, on June 28, 1976, before The Honorable Lloyd F. MacMahon, United States District Judge, sitting by designation.

APPEARANCES:

JEFFREY FISHER, United States Department of Justice, Washington, D. C.

-and-

PAUL R. SHANAHAN, ESQ., Onondaga County Savings Bank Building, Syracuse, New York. Attorney for Samuel L. Ebare.

-and-

JOHN R. RINALDI, ESQ., University Building, Syracuse, New York. Attorney for Joseph D'Agostino.

-and-

DAVID B. WEINSTEIN, ESQ., Metcalf Building, Auburn, New York. Attorney for Richard Michael Beach.

-and-

NORMAN A. PALMIERE, ESQ., Suite 700, One East Main Street, Rochester, New York. Attorney for Charles P. Grezo.

-and-

JOSEPH A. RYDELEK, ESQ., Setz Building, Syracuse, New York. Attorney for Louis M. Camerano.

-and-

C. ANDREW PAPPAS, ESQ., Gridley Building, Syracuse, New York. Attorney for Raymond Czerwinski.

THE CLERK: Court is now in session, and please be seated.

THE COURT: Bring in the jury.

(Whereupon the jury was returned to the jury box.)

THE COURT: Good morning. All right, Mr. Fisher.

BY MR. FISHER:

May it please the Court, and ladies and gentlemen of the jury: The evidence is in now, and it won't be long before you will have an opportunity to complete your responsibilities, those that are yours, and retire to the jury room and deliberate upon the evidence that was presented in this case, using as a guide and a foundation the rules of law which His Honor, Judge MacMahon will give you.

Now, it has been perfectly obvious during the course of this trial that you have been attentive and alert. This, despite numerous disruptions, such as jack hammers and the heat, and on behalf of the Government and the people and myself, I want to thank you very much for your attention.

I think that you will find that it will make your job easier in the jury room, the fact that you have listened attentively to all of the evidence,

and you have been conscientious and alert.

Now, as you recall from my opening statement, I said that the indictment has five counts. The first count is conspiracy, and the second count is conducting an illegal gambling business, and the last three counts are three specific particular interstate illegal telephone calls.

Now, there are certain things during the trial which it appears quite obviously are not contested by counsel, and not in much dispute, and I am going to go over those quickly first just so that we will have them in hand.

The first item which Mr. Rinaldi admitted during his opening statement was that his client, Joseph D'Agostino was a bookmaker, and was running a bookmaking office from the telephone number 455-7513. And indeed, the transcripts, the first 106 pages of the transcript of which you heard a sampling, the first 60 pages demonstrate that quite clearly.

In addition, the Government also showed that D'Agostino used the telephone of Leon Cook in about November of 1974, prior to using his home phone, and prior to Leon Cook's phone he used Monica Sims' phone, about October of 1974. So they switched around the phones.

Now, the other thing which does not seem to be in much dispute is the fact that this bookmaking business was being conducted in violation of the law of the State of New York. Indeed, the defense counsel has overtly put that forward, apparently as part of their defense.

In any event, the Government has shown that it has been -- this bookmaking business was operating in violation of New York State law. And also there does not seem to be much dispute about the fact, the one element which the Government must prove, that this bookmaking business was operating, and did in excess of $2,000 worth of gross wagers in any one day, or was operating in substantially continuous operation for a period in excess of 30 days.

Now, it is submitted that we have proved both ends of that, although we only had to prove one. Indeed, the $2,000 element is the easier to show. The expert prepared that chart, which is Exhibit 17 admitted into evidence, and he totaled the action, and he explained to you how he totaled it. If you don't agree, you can go back and compute it yourselves. But it is clear that the total comes to $13,985 in one single day, January 4th.

Indeed, the betting of the Defendant

Grezo alone was over $2,000 in one day, and the total bets of Czerwinski of one day was over $2,000.

In addition, the expert testified that there were many other days in which the total take, the total action was over $2,000.

Now, I am not referring to profit here, by the way. Profit doesn't matter. It is the total betting revenue.

Now, the other thing that has been agreed upon is the stipulation, and just a word about this and why I am referring to it in my summation.

This stipulation is an agreement between the Government and all of the parties in this action, all of the defense counsel. Everything in here can be taken as truth. In other words we have agreed to this in order to make your job a bit easier. You do not have to dispute any of the facts in here. Everything in here can be taken as true, and you can narrow your consideration to whatever other issues you consider significant.

Now, I would like to ask you for a moment to imagine, if you will, that you and I are going to start a conspiracy to commit a crime. How are we going to plan to do this conspiracy? How do criminal conspiracies arise? Do we invite in a crowd,

and have a big open meeting, and announce it to the public; a ribbon-cutting ceremony?

Would we draw up a partnership agreement, and have everybody who is going to be a partner sign it? And would we talk on the telephone a lot, knowing that perhaps the Federal authorities have the power to go to the judge and get a Court Order to get a wiretap? Would we have everyone introduced at the meeting and everybody know who everybody is, including the boss? Well, it is not likely, as you well realize.

We conduct a conspiracy in secrecy. That is the foundation of a conspiracy, to conduct a crime. We would delegate responsibilities, if we were the bosses, and we would have the authority, of course, to delegate responsibilities to lower level people, and let them take the heat, and put them up front, and let them run the business as we would tell them to do it.

We would just sit back, and count the profits, and give the orders, and feel fairly well insulated from law enforcement detection.

Now, I am going to begin by discussing the evidence against the Defendant Ebare, Beach, and D'Agostino, and show you how they were the three bosses; how their effort was to insulate themselves

from the others in the conspiracy, especially Beach and Ebare, the two higher bosses in the operation.

Now, Mr. Shanahan said in his opening statement that the Defendant Ebare wasn't involved in this gambling operation.

Mr. Weinstein said in his opening statement that the Defendant Beach was just a drinking buddy of Ebare, and that is about it.

Well, that is clearly not true from the evidence. You will recall the testimony of Leon Cook. Leon Cook testified that he supervised a group of bettors in the Syracuse area, that he got the line information from D'Agostino, and passed it along to his bettors, and the bettors called D'Agostino to place their bets.

And perhaps most importantly, when it came time to settle up at the end of the week, it was Cook that was responsible. Leon Cook wasn't just a hanger on or a casual party to this; he was responsible for paying up Joseph D'Agostino when his bettors lost. And accordingly, he was the one who settled up with the bettors. And that is our first example of insulation.

Leon Cook insulated his own bettors, the people he supervised from D'Agostino.

And as an example of that, Leon Cook testified that he had a bettor who was a student at Syracuse University, and that bettor got in hock to him for $400 or $500. It was Leon Cook who took his car in payment of that debt, and Leon Cook then paid off with his own money Joey D'Agostino, who was aware that Leon was taking the car but D'Agostino never personally contacted the bettor or talked to the bettor.

Now, I might add here, and it is an appropriate point; what was Sam Ebare's knowledge of Leon Cook's participation? Well, there wasn't any direct admission from Leon Cook that Sam Ebare headed it, but there was a phone call in the latter part of the transcript in which -- let me point the page out to you; it is Page 2 at the very end, and that is the section of transcript on Ebare's phone, or Kathy Gell's.

And Joey D'Agostino is calling in and talking about meeting up with Ebare. And then, about the middle of the page, he says that he has to see Al at the other Johnny's at 4 o'clock and Ebare asked who, and he says Al -- Clyde. And Ebare says yes, and he says I have got to talk to him.

Now, D'Agostino is reporting to Ebare

that he has got to meet somebody, some Al or Clyde at 4 o'clock.

You will remember that Leon Cook testified that his middle name was Clyde. Well, let's see where Joey D'Agostino was at four o'clock that afternoon. That is the 23rd. Ebare and Mike Beach, and I am reading from the stipulation now, which was agreed to: "Ebare and Mike Beach were observed entering Ebare's Cadillac in front of the place at two o'clock or three o'clock or 2:30, and he was observed with Ebare, and these were sportsmen, and at 3:47 p.m. D'Agostino and Leon Cook met at Howard Johnson's.

Johney's, in other words, the restaurant at Syracuse, New York.

So that at least it shows that Ebare discussed with D'Agostino the settling up. Obviously it was a settling up meeting, and that was their relationship, and D'Agostino and Cook were settling.

Now, what about the testimony of Jimmy Keller, and here is another example. You will remember during part of the tapes that you heard, and we only played part of them for lack of time, but they are in evidence and you can hear anything you want if you want to hear more.

Czerwinski and D'Agostino were having a conversation and Raymond was complaining that one of his customers was behind by a -- it was $1,800 he said, and he can't pay up, and he wants to bet on the Super Bowl.

And D'Agostino asked who is it, and Czerwinski said Jimmy Keller and he owned a used car lot, and he wants to see Sam. How come Keller found out that Sam was the top of the organization, and he wanted to bet the Super Bowl, and he wanted to go to the top.

D'Agostino's reply was, "He can't see Sam. Tell him Sam is out of town. Tell him he doesn't have anything to do with it. Whatever you do keep Sam out of it - out of the implication."

Obviously D'Agostino has been instructed to insulate Sam. Sam does not deal with the bettors, Sam deals with the high level echelon associates, and that is it.

Now, as it turns out, they continue talking page after page, and at Page 246 of the transcript there is a significant conversation.

I will ask you to turn to that.

At the very top there, they are talking about Czerwinski, and the fact that he wants to see

12

Sam, and at the third line he said, "I tried to make a deal with him," meaning that Keller tried to make a deal with Sam, you know, and D'Agostino said, "Yes, he is liable to get a punch in the mouth. That is what is liable to happen to him."

It is so important that Sam be insulated from the bettors in this organization that D'Agostino is willing to get a punch in the mouth before Keller can see Sam.

All of this, as I have explained, is in the transcript and it is confirmed by the testimony of Jimmy Keller, reluctant as he was, one must remember. He testified that he did get into debt up to $1,600 or $1,800. He got in over his head, and they probably characterized him as a sick bettor, who just got in too far.

He did want to see Sam because he was an old friend of Sam, and apparently because he was an old friend, Sam did eventually meet with him, and that was the meeting that he described in his garage, or in his car lot or in his office.

Who was there? Jimmy Keller, Sam Ebare, and Mike Beach. They discussed the debt. Sam was upset. Sam said, "If I had lost, I would pay you. Now you lost and I expect you to pay me, or, why don't

you pay me."

And they discussed it back and forth, and finally Sam gave the instructions "See Baldy on a time basis. See Czerwinski on a time basis."

Now, the trouble was that Sam did not make the details of the decision clear. He just said, "See Baldy," and he gave the order.

He gave the instructions, and he is letting Baldy take care of the details, and that is another occasion that Sam is boss.

Now, what about Mike Beach there? It is true he just stood there and said nothing. He had apparently no part. Sam just brought him along.

Well, picture yourself, if you can, in this office, and the used car lot, and here is Jimmy with two people, see Sam Ebare and Mike Beach, and Mike Beach is just standing or sitting in the corner like he is now doing nothing; nothing. What is he there for? A casual conversation? Just being friendly?

James Colloca. James Colloca was cast as the agent of the Ebare bookmaking operation in Oswego. James Colloca testified that he had bettors who he supervised, and similar to Leon Cook he would give the line to his bettors, and then he would take in the action, and together with a little action of his

own he would call it into Joey D'Agostino, or whoever was running it. And Michael Beach, at least four times that he can remember, perhaps more, came around and settled up at the end of the week.

Now, Jimmy Colloca also had a significant responsibility in this organization just like Leon Cook. He was responsible if his bettors didn't pay up. Jimmy Colloca was a bettor, but never met Joey D'Agostino. They were insulated. If he settled up with his bettors, then he settled up with Mike Beach or Sam Ebare.

Now, that again is an example of the insulation. You will recall that once Sam -- or Jimmy Colloca testified that Sam Ebare came around to collect $1,200 that he owed, in his cleaning establishment and Jim didn't go to the bettors, Sam went to Jimmy Colloca in his dry cleaning store, and he said, "You pay up, or I am going to have to take one of your machines."

The machines, of course, are his livelihood, and his only source of legitimate business.

And there were other meetings that Colloca testified to in the Pink Pussycat, and in the Chartroom, in which it is stipulated that on October 30th, 1974, James Colloca and Sam Ebare were at the

bar in the Chartroom in Oswego, New York, and an agent sitting nearby over heard them discussing how much money Colloca owed Ebare. Ebare stated that one time he made 14 calls a week up here, and that it had cost him $40 a month in just some phone calls.

Some of the conversation was unintelligible to the agent, and a figure of $498 was over heard when Colloca made a statement that it was all down in black and white.

Ebare was discussing making collections, and he testified that Beach came around and collected, and it was D'Agostino who took the action, together with other people on the phone in Syracuse.

Now, I would like to remind you of some of the evidence, some of the first evidence that was collected in this case.

First of all, items that were abandoned by Sam Ebare when he rented this apartment at James Crest Manor.

Now, the first surveillance, and I won't read it to you, but they show a general pattern during this month, that is late December, and early January, 1975, of D'Agostino and Ebare and Beach going into this apartment which they apparently rented for one month for the purpose, at the end of the football

season, lining up all of their agents, and having a private place where they could discuss these things.

And this was part of the property that Mr. Epiloto testified that he gave to the FBI Agent from the garbage of Sam Ebare, and you will see I am referring to Exhibit Four now, and there is a list of codes, and there is a list of numbers on one of these pages, and some of the codes, 76, bald, devil, and B.B.R., and R 12, and 14, all codes which you recognize as either bettors or bookmakers, people who called into that operation.

And the numbers indicating in all likelihood, the bottom figures. The number associated with each of those people.

Here is a list of dates: 11/30, and 11/23, and 11/16, and so forth. And here is the slip, and these numbers going down here.

You can analyze these if you want. And there are more dates and more numbers, and more editions.

It is clear that this apartment was being used to discuss bookmaking business, and that three of the top people in the bookmaking business were using it; Ebare, and Beach and D'Agostino.

Now, what about the items that were

seized from the Cadillac of Sam Ebare, when Mike Beach and Sam Ebare were there? Well, here we have on a piece of paper lists of codes. Frank, Zeb, T.L.Y., and Plymouth, and Frank, and there is a person named Fanley, who calls in, and we didn't play that call, because as you can see from your index on the front, there are two Franny conversations, and Item No. 4 there, and that is on Page 126 to 127.

Now, in addition, there are sheets and schedules. True, they are not written on. They are not filled out. They were discarded. And these were the ones that weren't used.

I would not expect a man like Sam Ebare and Mike Beach to make the mistake of throwing out their football cards with their lines and the total action on it. This is a secret conspiracy, and when they get through with it they are going to, at the end of the week, just destroy all of their records.

But they did make the mistake of throwing away the extras, and it shows that they were using his car, at least, and while they were in the car they were making the rounds and making the collections.

Now, the items that were used -- well, then we have the money. There was some $1,359.56 in cash on Sam Ebare. That was stipulated to in the

evidence, when he was searched.

Now, ladies and gentlemen, again an indication that he was going around with Mike Beach making his collections. These are the items in Exhibit Six, which were taken from Mike Beach, and again they have the name of the teams and the numbers, and they even show you -- Mike shows you how he uses the line sheet. He uses these, or these printed sheets, and they give the names of the teams, and then they give the line here which they get, and which they use when they are taking down the line, and they have to write it down quickly.

In addition, we have Beach's notebook. You will remember Agent Lonnie pointed out to Mr. Weinstein that this notebook contained names of teams, and the names of the line in them. When he was writing down he often used this notebook. In addition to names of teams and names of lines, this also has some very interesting phone numbers in it. The very last page at the top has 468-4661, and that is stipulated to as the telephone number of Leon Cook.

Then 455-7153, and you recognize that as Joey D'Agostino's home phone number, where he was taking the action.

On the other page here you have Ed Miller,

402-473-4110, and that is Eddy Miller. That is the name that Camerano used to answer the page at Las Vegas.

Then under the E's here, we have Sam, and that is 451-4898. That is Sam's home phone at Ruby Road in Syracuse.

And we have 479-4010 and that is the second number that was wiretapped in this other section and that is Kathy Gell's apartment where Beach called.

Now, ladies and gentlemen, I would like to review with you a few of the phone calls that Beach made, and Ebare made to again show what there is on the tape. This is their very own voices while they are conducting and operating this gambling business.

On December 23rd, 1974 at 11:28, an unidentified female called up, and you can refer to the transcript if you want, or I will summarize it. This is on Page 1 of the very end section there, and I am just going to go through it.

I will go through some of the calls.

This is the call from an unidentified male, calling in and he asks Sam Ebare essentially, "You sleepin?

"No, I just got in."

The unknown male says, "You just got in?

"Yup."

The unknown male says, "What'd ya going to do today?

Ebare says, "Got a lotta s--- to do, gotta get the liquor out, gotta go see Ray and Joey. Where are you going to be?"

Then the unknown male says, "Oh, I'd like to get, ah, I need to get some bread from you," and he goes on to explain that he needs a dime, which is $1,000 and he says, "Actually I don't, I need a hundred, I need to get, I need to give that other kid that, uh, that money."

He is settling with the kid. Now, we don't know who this caller is, but we think that he is insulating Sam from this kid who is obviously a bettor.

And Ebare said, "All right. Tell him I get it now."

That is giving the instructions that the money is okay, and you can pay it off and then the unidentified male says, "Okay, and then I'll square with you later."

Then, on Page 4 there is a conversation between Mike Beach and Kathy Gell at that apartment.

and Beach calls in and he doesn't want to talk to Sam Ebare but he says to give Sam Ebare a message.

"Don't put him on. Here is what you gotta do. Promise to tell Santa Claus to pry me up a little Christmas cash."

It is not often in a gambling business that we can ever prove how much they are paid. They are not issued pay checks with little stubs in the corner for taking tax deductions and social security. They are paid with cash, and in this instance, Beach called and wants his cash for Christmas.

Now, Page 18, and this is a conversation between Kathy Gell and Sam Ebare. Sam calls in and is apparently drunk, and you heard the conversation, and Sam says to her toward the end of this, when she asks about Oakland, and he says, "We need Pittsburgh. We need Pittsburgh."

And then they are talking about gambling right on the telephone. We need, and not I need, but we need, and this is a gambling bare.

Then on Page 20, Joey called in and wanted to arrange a meeting, and it was at the Toddle House, and sure enough, at one o'clock he arranges a meeting. You notice that Sam never calls in to Joey's phone on the bookmaking office phone to arrange meetings. In

fact, Sam never called in there at all. That is a proven link of being a boss and he doesn't have to call the bookmaking telephone at all to find out how it is. He waits for Joey to call him and arrange a meeting, or he can arrange for Mike Beach to do it, which was part of Mike's job in this operation.

Sam doesn't have to call in. Sam can insulate himself because he is the top man.

But of course, he did make the mistake of not anticipating that the FBI would seek court authorization to get a wiretap on this phone to where he was making at least arrangements in viled language about meeting for his gambling business. Again this call, and Joey calls once to arrange a meeting at the Toddle House at one.

The first surveillance on the stipulation shows that, in fact, he was there at one o'clock, at the Toddle House, and then they went over to 1070 James Street, their private little domain where they obviously talked about settling up with the various customers.

Then Page 21, Beach calls in for Sam Ebare. Sam gives him an order. "I want you, I want you to try to get a hold of that kid."

That is an order from a boss to a

subordinate.

"Which one?

"He is from, ah, the south side. As soon as you can. Twelve thirty. Where are you going to be at 1:30? George's house."

That is giving Beach orders on this telephone.

Then on Page 23, now, here is a very interesting call. Mike Beach calls in and he says, "Is he there? Just a minute." And then Ebare says, "Hello."

The first thing he says to Sam is, "What are you going to do, General?"

That is an interesting choice of words, General. I think that you can tell who is boss from the conversation, and then they arrange a meeting at the Sports Center, which the first surveillance confirms and corroborates.

On Page 24, Joseph D'Agostino calls in and talks to Sam, and he says, "That kid wants to see you yet?"

Sam is asking about a kid who is obviously seeing Joey settling up with a customer.

And Sam instructs Joe, "Why don't you stop by here," and that is the house, and he says, "And

I'll give you -- what's he got to have?"

How much money do we owe the kid?

And Joey says, "Well, he's got six one two coming."

That is $612, and then Sam says, "All right. Didn't you see Baldy, or anybody?"

Sam is saying, "Didn't you see Baldy or anybody, and wanting to know how Joey is settling up with the lower echelon bookmakers, and how its coming along.

Then Joey and Sam have a dispute about whether he gave him the money, and how much money Sam has in his pocket, and then toward the end, about three quarters of the page down there, where D'Agostino says to Ebare, "You ain't got anything, huh?"

And Ebare says, "Not with me, no."

He says, "Give him -- you don't have to give him all," and Ebare says, "Well, the season's over."

And then Joey says, "Well, its up to you."

Joey is suggesting, of course, that Sam is boss, and he makes the final decision, and the season is over, and Sam makes the final decision to pay.

The other surveillances we will not bother

to read to you. They are in evidence, and you can read them for yourself.

They show a general pattern of activity of meetings, and it is obvious that Sam Ebare does not talk much on the telephone. He arranges meetings on the phone, and then goes around and settles up, and discusses with his higher echelon people and the status of the accounts, and at these physical meetings

Now, what about the Defendant Beach? The Defendant Beach not only called in on this telephone that we have just been going over, Kathy Gell's phone, but he also calls in on Joey D'Agostino's phone. Beach was less insulated because he is down the line in the hierarchy, and Beach had to call into Joey D'Agostino to find out the various times and the status of the business, and get information which would further his collection activities.

Now, I ask you to turn to Page 107, if you wish, and I just want you to follow that, and you can summarize along if you want.

These are all Beach's calls, and listed sequentially through the period of the wiretap, and you heard all of them, and you can see the pattern of activity over the period of time, and that is why it is called a composite tape. It takes out the calls

and puts Beach's all in order, and you can see what he is doing here.

In this call, Joey gives Mike Beach the bottom of 1850 on Houston, and 820 on North Carolina State. That means they are giving the total amount of action that that business is doing, or has done on that game, and that is very significant because the expert testified that a casual acquaintance does not have access to that information. A drinking buddy would not have access to that information. If you are a businessman you are not going to give out your total daily revenues to just anybody, or even friends. You are going to give out to somebody who has a need to know, and somebody who is connected with your business. That is not the kind of information that is just spread all around the world.

Now, on Page 108, Beach calls in again, and by the way, you see he uses the code name "Harpo" when he calls on this particular phone.

But when he calls Sam Ebare's phone he does not use any code name because Sam can recognize his voice, apparently.

He gives Beach the line which, of course, a lot of people have access to and then, toward the end, in fact, the very end on Page 109 there, the last

five lines Beach says, "How do those games stand?" And Joey says, "They didn't. The people ain't got a chance to play it yet," and he gives him generally the status of the business.

Now, he wants to know how the game stands and who is playing so far. And Ebare wants to know, but he is not going to call into this phone, he is going to use Beach to find out, and then relay the message.

On Page 110, and this is another significant call, Beach calls in and says, "This is Harpo. Could I have R. K.'s figure? Yeah, R. K.? Yeah. Uh, where the hell is he?"

R. K. is not Mike Beach. R. K. is somebody who might be just collecting, and Mike Beach needs to know that bottom figure so that he can go out and collect it.

This is a rare call, and apparently they do most of this information at these meetings, but there obviously was a need on this day for Beach to call in and get R. K.'s figure. Again, this is not information that a businessman gives out to anybody and his brother. A businessman who has customers, and the customers owe him money on the account. These customers are going to leave him in a minute. if he

starts giving that information out to just anybody, and it is especially important for a bookmaker, a bookmaker does not want his competitors to know who his bettors are, and he doesn't want to take the risk that law enforcement lawyers are going to find out this information, and this is confidential, and only goes to somebody higher up, and someone who has responsibility and has a need to know. That is Mike Beach.

Then on Page 111, Beach calls in and says, "How'd we do today?"

And Joey said, "Well, not too good."

Beach says, "He wants you to meet him at eight o'clock at Ben's place. Coffee shop."

"All right, eight?" He is arranging a meeting. And who is "he"? Who is Beach arranging a meeting for.

Let's see where Joey was at eight o'clock that night on January 4th. I guess that one wasn't included.

But it is clear in the other calls, and this is certainly a sequence of part of those calls that Beach was arranging a meeting, or more or less with Ebare and D'Agostino, and that was one of his functions within the organization.

Then, on Page 112, Beach calls and gets the football line, and Joey says, "Well, its come in one but I think we gonna use it even."

It came in one, but they are going to use even, giving him a change in the line that the bookmaking business is going to use.

Page 116, Beach calls in and starts out by saying, "This is not a business call," meaning that all of the others were business calls, I suppose, and then he goes on to discuss business and asks for the line on the Syracuse game which D'Agostino doesn't have yet, and then he said, "You want to see him?"

"No, it's nothin important," and again, being the go-between to arrange the meetings.

Page 117, Beach calls in and says, "How do we stand here?"

D'Agostino says, "Well, I'm gonna wait till three because a lot of them wanna wait till the last minute. I'll give it to ya right now though, so far," and he gives him the bottom figure again. That is confidential secret information of the business. Three o nine o on Pittsburgh, and 3690 on Minnesota.

Beach says, "Well, that isn't bad."

And then toward the end you see that he

says, "Anything else? Any messages or anything?"

And you know who he is carrying messages to, and Joey says, "Nope, everything is good."

Then on Page 118, again, he gives him a bottom line of 5790 on Minnesota, and 3140 on Pittsburgh.

And then at the end, he says, "How do we stand there, ya know?"

Joey says how do we stand, and that is Beach's end of the business, and he says, Beach says, "Just about juice, all juice," and when he says just about all juice, he means that your account on balance on that game, and we have got all profit. It is all gravy.

And the next page is 119, and in the beginning he gives him the bottom figure of 2860 for Texas, and 1590 for Auburn.

Ladies and gentlemen, it is submitted that given that set of evidence, which is all here, and you can just listen to it again if you like, and any portion of the transcript can be read back to you if you like, and it is perfectly obvious that Ebare is the top man, and that he uses Beach as a go-between, and that D'Agostino is the man up front to deal with all other levels of bookmaking business.

D'Agostino will take the rap, while Ebare stays in the background.

And the money, which I did not have with me at the time, was in evidence, but it was known that the money that Ebare was carrying around was in hundreds, fifties, twenties and tens, primarily, and not big bills. Small bills for this amount of money, and carrying it around obviously to settle up with his people, and the money is in evidence, too.

Now, I am going to go to the Defendant Charles Grezo.

All of Mr. Grezo's conversations are all contained in a separate section in this transcript, at Pages 128 to 209. Now, we played part of that for you but for lack of time we just did not want to bore you with a continuous routine of the day in and day out business that Mr. Grezo was doing. But those conversations show the same pattern, he makes a call in and it is usually a long distance call because you can hear the operator interrupt and say to put your money in, after three minutes.

Then he gets the line from Joey. Then he calls back a little later, and then places bets, and lots and lots of bets, and lots of different games, up to his limit of $300 per game. And then he may

call in a little later, a second time, and say, "Give me a little more on this game," or "Take off this game," or "Adjust this a little bit for me. I am loaded."

And D'Agostino usually tries to accommodate him.

And when D'Agostino has a problem, Grezo will call in and say, "Well, I will give you a little more on this, or I will give you a little more on that, and let's work with the line and see what we can do there."

The pattern is in and out, and in and out daily, using many games, and large, large amounts of action.

Now, I know that the expert testified, he testified conservatively. He based his opinion that Grezo was a bookmaker, or somebody bigger than a bettor, on the basis on these telephone calls where Grezo called in and says, "I am jammed and filled up."

But we can add our common sense and see if that expert is right. We can add our common sense to that opinion.

Now, I ask you: Is it reasonable to assume that a man who calls in thousands and thousands of dollars of action a day on the one day that we had

computed here, he had $5,300 in one phone call in the afternoon of January 4th. He called in later and had another $200, and in the morning he had, or the early afternoon $400 there, and 1550 there. That was one of his bigger days, but on most of the days he had many, many games that amounted to thousands of dollars, day in and day out. How could that be his own money? When you bet you take a risk. You have to be able to lose, and Mr. Palmiere says he is playing the middle. If you are playing the middle you still take a risk, because you may lose both ends. It stands to reason anybody who is betting that large amount of money, day in and day out, day in and day out, is either the last heir of Howard Hughes, or he is a bookmaker, laying off his extra action. He has got his account filled up, and he goes around from phone to phone, and runs around and calls everybody, and his friends, and he gets in his action, and he talks to his bettors, and then he calls Joey three or four times a day, and bets in the excess, which is called lay off betting. Lay off betting of a bookmaker.

I ask you, can it conceivably be Grezo's money? Can it conceivably be even Czerwinski's money? Imagine yourself betting that kind of money day in and day out?

Now, there are many calls in here where Grezo discusses the bookmaking business with D'Agostino, and I will point a few of them out for you. You will recognize these voices as you heard the transcript or as you read the transcript, and you are free to use whatever other calls you want. I would like to point a few out.

On Page 140 Grezo calls in, and they discuss a problem of a questionable line.

First Sonny starts out by saying, "I got some advice for ya." He wants to give some advice. Sonny is giving D'Agostino some advice. It is a mutually dependant thing here where one bookmaker is talking to another, and then they discuss a questionable line: Milwaukee was 506 and Sonny heard it was 2 1/2.

And then Sonny says, "I'm going to give you two dollars, and then take it off."

And later he says, "I heard it was five and now I'm going to take it off," meaning I am going to take it off my board, and then I'll give you this last bit of action, and then I'm not going to take any more bets on it from my customers, because this is a funny line. A funny line? We need to have an accurate line in this bookmaking business, and that indicates that Sonny Grezo is a bookmaker.

Then, on Page 143, the significance of this conversation is that you can see Sonny as just getting the line here, but toward the middle, D'Agostino is talking about the fact that he doesn't have all of the games that he should have, and Greco says, "Go ahead," and D'Agostino says, "January 4th the other guy starts," indicating that we are getting a new line source on January 4th, and this is going to be better. This is going to be a good line for the operation.

As we found out on January 4th, the Defendant Louis Camerano started giving them the low end, and the operation went very smoothly.

Later in the conversation, on Page 146, both he -- I am sorry that is on the bottom of the page and that is Page 146, toward the bottom there is a part, and a middle part where Sonny wants to lay off some action. He wants to give some action, on Ohio State, at the line of ten.

Now, D'Agostino doesn't want to take it at the line of ten. Half of it at 9 1/2 to ten, and half of it at 10 1/2.

And Sonny says, "I ain't got no 10 1/2. I was gonna play 9 1/2 - 10." He has got it and he has taken it from his customers at the lower line.

Sonny has.

Grezo has taken that action at the lower line, and now he can't give it to Joey D'Agostino at the higher line and he is objecting, but it indicates that he has customers of his own.

Now, on Page 147, eight lines there from the bottom, Grezo wants to place a big bet, $300 each, a total of a $600 bet, and Sonny says, "I'm loaded," and Joey relents and takes it.

"I'm loaded" means I have too much action. A bettor would say, "I want to place a bet" and then the bookmaker says, yes or no, but when he says, "I'm loaded" he is up to his neck in action, and he has got to get rid of it, and, "I have got to even my books, and I have got to lay it off."

On Page 164, during the conversation, Grezo places his limit of $300 on Notre Dame and then later he wants another buck because he says, "I am getting all on Notre Dame." He is getting all of this action from his bettors, and he has got to bet Notre Dame to even his books. He discusses the question of the East-West game, and whether it is East or West or North or South, and there is some confusion, and Grezo ends up giving him advice. He says he thinks it's an East-West game, but if it ends

up North-South just cancel the whole thing and no bet. Again, his independence in giving advice.

Now, on Page 166, top of the page the first few lines he wants to bet another buck on Notre Dame after that action, indicating he is loaded up and wants to get rid of it. D'Agostino says, "I'm jammed that's all, that's it, forget it. I don't want any more."

And Grezo says, "I'm jammed too."

That is one bookmaker talking to another bookmaker, and they are all jammed and they have got more action on Notre Dame than they can handle, and Grezo wants to lay it off.

There is an interesting conversation on Page 176 toward the bottom of the page. Joey says, "What about business," and Sonny says, " The heat, the heat, it's the heat."

This is in the middle of the winter, mind you, and January 5th. Sonny said, "The heat, the heat. Hotter than a firecracker."

And Joey says, "Not me and you though, right? No."

Well, the first reference to their fear of law enforcement authorities, and they are constantly hiding out, and a bettor would not be

secretive about that. A bettor is not violating the law, and he would have no reason to fear the heat, and only a bookmaker would be concerned with the heat.

Page 180, about a little over a third of the way down, Sonny gives Joey a couple of lay off bets and then says, "I gotta get business now. I gotta get business."

A bettor does not go out and get business, but a bookmaker goes out and gets bets.

Page 182, Sonny says, "I'm getting you business. I'm out hustling." I'm out hustling is six lines from the bottom. He is going hustling from one pay phone to the next calling all of his customers and making contact and seeing his people and settling up and then calling in late odds.

On Page 197, and that is an interesting conversation, too; look at the first two lines there on Page 197. Grezo says, "Are you there?" And then Joey says, "I was getting very worried."

And Sonny says no, don't get worried. Joey says, "Well, you didn't call."

Sonny says, "I got a zillion games don't worry."

Joey is dependant on Grezo for all of this action, because he gives him so much. and because

he needs the action to make volume in his own business. It shows a mutual dependence here.

Page 202, now, this is toward the end of the betting day on the eleventh, which was a particular betting day, and Sonny called in many times and made many, many bets, and finally Sonny asked Joey, "I need help on two games I gave you already," and he proceeded to add a $100 bet on Manhattan and Wyoming and kill the bet on Notre Dame. He needed help and he wants Joey to help him.

Normally when you place a bet with you bookmaker the bet is placed, but when one bookmaker needs help balancing his books and asks Joey for a favor of helping him and to take it off the book or add it to the book, that is because Sonny is in trouble and he has taken too much action and needs that help, and Joey is willing to accommodate.

Finally on Page 204, I point this last conversation because they discuss the discrepancy in the bottom figure, and they are not quite sure how much Joey owes Sonny or vice-versa, and three quarters of the way down he says to verify it when you call back so I can rip up the sheets. "Who ya gotta rip em today?"

Again, ripping sheets in secrecy. It is

their pattern to rip up the sheets, and to rip up their totals so that at the end of the week, or at the end of the day they can settle up and they are through, and they are not allowing records to lay around to be discovered by law enforcement authorities.

Now, I am going to quickly review the Defendant Czerwinski. Czerwinski's attorney, as he must admit in his opening statement, his client was a bookmaker. Indeed, we have already gone through that situation. There is conversation in here where Czerwinski talks with D'Agostino, and when Czerwinski calls him up and says I got 15 people waiting for the line, and that is on Page -- that is one of the beginning calls on January 4th, where everybody is calling in, and that is on Page 7. Everybody is calling up anxious to get the line. He says in about 15 minutes he will have it.

No question in this case that the Defendant Czerwinski is a bookmaker who is getting the line, and dealing with bettors of his own.

Now, finally I would like to discuss the Defendant Camerano. As I said in my opening statement, we would show that Camerano was a Las Vegas connection.

Now, right at the beginning of your

transcript, the call on January 4th shows that all of the customers of the business, the bookmakers and the bettors are calling and asking for the line, and there are eight or ten that call in and cannot get the line and for the most part they are disappointed.

The very first call is, of course, Sonny Grezo called and that is interesting, and that is Page 1, because they discuss this and D'Agostino says it is too early out there, and nothing until 12:30, at least 12:30, and he is talking about 12:30 in the morning. It is too early and it is only 8 o'clock in the morning out there and give the guy a chance. Eight thirty, and 12:30, and that is right, and we computed the time zones as four hours difference.

But he is talking about the line. And the line source with Grezo and the problems of getting in, but they know that the new line was coming in on January 4th and it would be a better situation than they had before.

Now, on January 4th, at 12:28 p.m., Camerano did give Joey D'Agostino the line. All of the Camerano's calls are together, starting on Page 120.

This first call is the basis for Count III of the Indictment, the interstate telephone call

between Camerano and D'Agostino on January 4th at 12:28 p.m., and this call, as you can see, is a long distance call and the operator is interrupting, and he gives D'Agostino the line and toward the end of the call, on Page 121 at the end, they arrange for the next call, and that is what is significant. They say that Joey has to get the line for the night games; another line that night.

And D'Agostino says, "Two o'clock," and Camerano says, "Two o'clock my time. D'Agostino says, "Okay," and he says, "Same number," and he answers, "Yeah, Flamingo."

And that is what forms the basis for Count IV of the Indictment, the second interstate telephone call.

Now, the second interstate telephone call is not recorded at D'Agostino's phone because he was not at home when he placed that call. He was at a pay phone booth. Let me back up a minute. What happened to that second call? They agreed to call back on it that same evening or two o'clock on Camerano's call, at the same number, and the agent testified that at two o'clock, p.m. Las Vegas time, at the Flamingo Hotel, based on the information that they had gotten from the first phone call, the FBI

stationed out the various telephones in hope of getting somebody that was going to call Joey D'Agostino, and at two o'clock Camerano came along, and he was identified by the agent in the courtroom, and he answered a page for Eddy Miller, and at the same number in Beach's notebook, and he went to the house phone at the Flamingo and said, "Florida 184; Penn State 1611, and Memphis at six."

Now, that is submitted as line information but there are some words missing, and the agent was six feet away. He testified that he couldn't get every single word, and there were some names there that he couldn't get, but at the end of the call he said, "All right, nine thirty," and then he said, "Four five seven-one five five three."

Now, these are the agents original notes, which I did not object coming into evidence, and these show the line that he was copying down fast and furiously from six feet, with a telephone in his hand, and he had a very human problem of trying to get the line information and listening, and it is true on these notes that he said 457-1153, and he transposed a number, and it was 455-7153, but he got the information that they were -- the next call was to be arranged at 9:30.

Now, where was Joey D'Agostino at this time, January 4, 1975, at 5 o'clock p.m.? According to the stipulation, Joey D'Agostino was on the southern corner of the luncheon section of the Sportsarama in Syracuse, New York. He disappeared around the corner from the agent's view and at 5:04 p.m. he exited the Sportsarama. This is two o'clock Las Vegas time, and five o'clock Syracuse time, and the agent entered the Sportsarama and observed that around the corner there was a public phone there and he gave the number.

MR. RINALDI: I will object to this line of comment by Mr. Fisher. I don't believe that any of this is in evidence.

MR. FISHER: The stipulation is in evidence.

THE COURT: I do not want to turn this into a running debate. It will be the recollection of the jury of the evidence, and don't interrupt.

MR. FISHER: Ladies and gentlemen, you can read from the stipulation if you like when you get into the jury room, and it is in evidence.

Now, the important thing about this call is the arrangement that they made for the next call because that next call, it was positively

identified as Louis Camerano in this case. It was at 9:30, and then he gives the number.

Now, the next call is recorded, and that of course is on Page 122. It is January 5th, at 12:27 p.m. That is the basis for the fifth and last count of the Indictment, the January 5th call between Camerano and D'Agostino.

And that call, the agent testified that at the Las Vegas end he physically surveilled Camerano. But that time they had identified him, obviously through his house in Las Vegas, and then to the Sports Book at the Churchill Downs, and you heard about the big board with the line, and they had a large board and they freshened it up when they got new information, and that is the line that all of the bookmakers like to use because it is up-to-date.

He goes in there and at 9:28 he goes to the phone, and at 9:28 the agent saw him place an outgoing call from a pay phone and he said, hello, here it is. "Pittsburgh 3 1/2," and you can look at your copy of the transcript which was recorded at the other end, and it was Pittsburgh 3 1/2, and then North won over the South, and Milwaukee was 3 1/2, Cleveland 3, Kansas City 4, Portland 13, and Washington 2, and then they agreed to meet at the other

place or call at the other place tomorrow at two o'clock.

Now, the agent testified that that phone call took place, and he looked at the phone number and it was 437-9774.

Of course at the Syracuse end of that call there was three hours difference when this call came in that is on Page 122. We have Camerano identified at one end, and D'Agostino identified at the other one, and it was to put the line in, and we have a telephone toll record which is part of the stipulation and it is Government Exhibit Fifteen, a telephone toll report of that date from that number, and it was a phone booth and a call was placed to Syracuse, New York, and that number was 455-7153, and it was at 9:29 a.m., and again at 1:40.

There was a difference of one or two minutes in watches, presumably between those two calls, but ladies and gentlemen it is submitted that we have Camerano at one end, and D'Agostino at the other end, and the telephone call between.

If you have any doubt about the previous call we have identified Camerano positively, and the agents working backward show how they arranged it from the previous call and you can see the

agent identification of Camerano on the previous call and it was correct.

In addition to that, we went through and the agent testified as to the final call, which is not specific interstate call charged in this Indictment, but which shows the sequence, and that is the evidence that on January 6th that Camerano answered an Ed Miller page at 1:55 at the Dunne's, and he over heard him give the line information. He identified the voice of Camerano, and we have already positively identified him, and he identified the voice of Camerano by listening to the tape and comparing that voice from his interview.

Now, in addition, there are two more calls from Camerano later on in the week, on Page 123, and 124, showing again the line information.

Now, obviously they had a pattern where Joey D'Agostino made a call at a phone booth, and sometimes he would accept the line information from this phone at his home.

But it is obvious that from January 4th through January 12th we have shown a fairly consistent pattern of giving this all important line information to the bookmaking business.

And in addition, we of course, and you

will remember the interview, and Special Agent Abby testified that he interviewed Camerano, and he asked Camerano if he ever accepted a page for Eddy Miller, and he said, "Oh, no, I don't know an Eddy Miller."

They asked him if he had ever given any line information, and he knew nothing about that. They said, "Well, we saw you do it, " and then Camerano just shut up.

So, ladies and gentlemen, it is submitted that the Government has shown, from all of this evidence, that each of these six defendants has been proven to have an active role in this bookmaking business. Each of them has a role, either as a bettor, and showing higher than a bettor, whether it be a writer or a bookmaker or a collector or a boss, or whatever. Each of them has a role in the business.

And in addition to these six defendants we have also shown that Mr. Cook had a role because he supervised a group of bettors, and Mr. Coloqua because he supervised a group of bettors, and several others had a role and the expert testified when the lab analyzed all of these tapes that several others of the people who are only known by their code names, had a role.

But the important thing is that each of

these six defendants had a non-betting role in this operation, plus the two conspirators who are not named, Cook and Cologua, for a total of eight people, and the Government only had to prove it was five.

It is submitted that on the basis of this evidence that we have established the charges, and each and every one of the charges in this Indictment has been established, and accordingly, it is submitted that your verdict should be guilty on all counts against all the defendants.

Thank you.

THE COURT: We will take a short recess.

(Whereupon the jury was excused.)

THE CLERK: Court stands for a short recess.

(After a short recess the summations were continued.)

THE COURT: Mr. Rinaldi.

MR. RINALDI: May it please the Court; Mr. Fisher, my co-counsel, and ladies and gentlemen: First of all, let me apologize for my back being to you, but that is the only spot that I could find near the witness stand, because I have difficulty hearing.

At this time myself and the other attorneys will have a few minutes to review the

evidence, as I see it, and of course, if my recollection -- excuse me -- but if my recollection of the facts differ at all from yours, you must take your recollection.

Now, the stage for this melodrama was set a long time ago but the procedure was set by Mr. Fisher and the various directors, who are the FBI agents.

Remember, this is a court of law, and we abide by the democratic principles; no one is accused on suspicion.

Some people will say that where there is smoke there is fire. That man must be guilty. Well, that is not the way we try cases. What we do is rely on sound, reliable evidence.

Now, if you people choose to speculate, if you choose to surmise, or if you choose to guess as to the guilt or innocence of the defendant, then you are violating your oath as a jury. If you wish to adopt the theory that where there is smoke there is fire, you are violating your duty as a juror, and you are violating the principles of justice.

Now, I am sure that you will hear, and you have heard already that there are some facts that are consistent with the Government's case, and there

are some facts, the same set of facts that are consistent with the theory of the defense.

When you listen to this, bear this in mind, that this indicates that there is some evidence, but the evidence is insufficient, even if there is some evidence, and if there is insufficient evidence, the law says there is no evidence.

You will recall that the burden of proving the defendants' guilt rests, of course, with the prosecutor, and that burden never shifts. You may recall at the outset of this case that the Government outlined for you in his opening statement that it takes five or more defendants, and you may recall in my opening statement I admitted to you that Joey D'Agostino is a bookmaker. There is no question about it. There is no disputing it. You have read the transcripts. It is quite obvious.

The real issue here is; was he so allied with four others, or more, as to constitute a violation of the Federal law for which he stands accused? I submit to you that he was not.

Now, I am not going to comment on the various co-defendants. I am sure that co-counsel representing these defendants will set forth their recollection of the evidence as they, themselves,

remember it.

But throughout this case, if you ladies and gentlemen recall, we are talking about a group of gamblers here, nothing more.

But the Government chose to use very, very beautiful words; hierarchy, organization, writings, administrator, trustee, manager and supervisor. We are talking about people who gamble with one issue in mind, whether or not there were five or more who were mutually in some sort of agreement to violate the Federal gambling law.

Now, there is no use of me making any reference to, of course, the tapes and the transcript you have in front of you. You have heard the tapes, like we all have. But I would just like to make a comment on two people: one is James Colloca, and the other one is Leon Cook.

Now, both of these men admitted that they were bettors; there is no question about that. That is undisputed.

The only thing that is in dispute here; were these two men not only bettors, but also agents of Joey D'Agostino, and I submit they are not. They admitted that Coloqua admitted that he did his betting and he had some friends that he bet with, and he

accepted their bets, and he accommodated their bets by passing them on to Mr. D'Agostino, with whom he had established a rapport. I don't feel that that is a -- I don't feel that that is that type of a situation that is encompassed within the Federal law for which they stand accused.

Now, both of the things about Mr. Coloqua is quite interesting. He never accepted bets from his bettors. He used other lines, he didn't use Mr. D'Agostino's line exclusively. He bet other bookmakers. These are all indications of what the prosecutor would have you believe was such a mutuality of interests that he would fall in and become one of the five.

Now, the same thing, almost basically, applied to Mr. Cook. Mr. Cook said he was a bettor, and he, himself, accepted bets from the friends that he knew and you heard him, and I think that he said three or four bettors that he had.

But let me tell you the thing that really interested me, and I cannot, for the life of me, figure it out: The Government brought in a special gambling expert from Washington, D. C. Why? Why did the Government chose not to find out from Mr. Holmes the exact role that both Mr. Coloqua and Mr. Cook

played in this alleged gambling establishment? He could have done so very easily. He did it with all of the other defendants. He had a set of facts, and circumstances, and he said that man was an administrator, this one was a trustee, and this one a supervisor, and this man is a writer. Why didn't he do the same thing with Mr. Coloqua and Mr. Cook?

I submit to you that he did not, because Mr. Holmes could not render an opinion that would place these two men within the five or more that are necessary to violate the Federal law.

Now, let me go on to another one, and some of these things are interesting in just passing. Of course, I think, and I don't know if my recollection is as good as it used to be, but I think that in the transcript that is in front of you, ladies and gentlemen, there are approximately 160 phone calls. There are none between Joey D'Agostino and Sammy Ebare on the phone, that Joey D'Agostino was using for his gambling operation; bookmaking operation. Not one.

There are several, as Mr. Fisher has pointed out to you, that were between Mr. D'Agostino and Mr. Ebare at some other phone, but not from the bookmaking phone, and I think that that is of some

significance but, of course, I will leave it up to you ladies and gentlemen to decide how important it is.

Now, with respect to Joey D'Agostino using the phone to obtain a line from Las Vegas. Now, no where in that composite script is there any evidence, and if there is, you use your recollection, is there any evidence that Joey D'Agostino received the call -- not received the call -- made a call to Las Vegas.

Now, let's analyze for a minute some of the FBI agents' testimony.

Special Agent Supan testified that he and four agents went to the Flamingo Hotel in Las Vegas, and they had a pre-arranged meeting that the five of them would each take -- well, they made reference to a bank of telephones within the Flamingo Restaurant, awaiting a phone call and page for one Eddy Miller.

It is interesting to note that every FBI agent who testified here mentioned each one -- each one of them mentioned the person that they were looking for when they went to the various hotels, which was the Dunnes, and the Flamingo, and it was always an unknown subject.

Another thing that is quite interesting to me: I think that it was Special Agent Supan, and also Special Agent Abby, and I think that they both identified this Eddy Miller as being six feet tall, and weighing 170 pounds, and one of them said he was about 35 years old with brown hair.

Special Agent Scobie testified and said he was about six or six one, and 190 pounds, and he had black hair. He was about 30 years old.

Now, it may not seem much to you, but 20 pounds on a man, and brown hair as distinguished from black, leads me to believe that maybe they weren't surveilling the same guy.

Now, Mr. Fisher made some reference as to Joe D'Agostino making a call from Syracuse to Las Vegas.

Let me tell you that the only evidence that I think that he has got, if that is the kind of evidence that we must rely on to find him guilty, is highly improper in my eyes, and let me tell you why. He said that from the physical surveillance, that one of the FBI agents was following Mr. D'Agostino, and he went to a place called the Sportsarama, which is in the suburbs of Syracuse, New York. Now, this FBI agent in that surveillance reported that no time d...s

it indicate that he actually saw Joey D'Agostino making any phone calls. No one ever saw Joey D'Agostino making any phone calls to Las Vegas.

What he did, and I think that you will find this throughout the FBI's testimony; they surmised, they saw Joey D'Agostino walk into the Sportsarama, and five or ten minutes later he walked back out, and the FBI agent then walks in and looks around the building, and in the southeast corner of the building he sees a public phone. He ties that public phone in that building with Joe D'Agostino walking in there. He could have testified very easily that there was nothing in that place. He could have said that. He said he could have seen him walking in a southeast direction, but he didn't say that.

But that is the only in[illegible]ation that Joey D'Agostino ever made a phone call to Las Vegas.

Now, the thing that startles me to some extent; while Special Agent Supan went into the Flamingo Hotel and he said he took up a position near that bank of phones which were nearest to the entrance of the Flamingo Hotel, and the others, apparently, took up a station at some other phone. He stated that he never knew who Eddy Miller was, never had [illegible]ny

idea, and if my recollection is wrong, you take yours, but my recollection is that I don't recall Special Agent Supan stating that he heard a page for Eddy Miller. He did state that he was on a public phone, some two or three phone booths away, and operating away from this person alleged to be Eddy Miller, or Eddy Miller alleging to be Camerano.

Now, you people have heard a few of these tapes, and the tapes attributable to Lou Camerano and Joey D'Agostino, at Joey's number in Syracuse.

The issued is: Was that Lou Camerano that made that phone call? What have we got? What proof is there at the time, at the time what they saw was in a gambling casino and you heard some of these tapes, and I am sure that you will recollect that what you were listening to on the tape was a phone conversation, and we were still able to hear the background noise, and I submit that it must have been much noisier there at the time.

But anyway, Officer Supan stated he was there for five minutes, and he was overhearing, and Mr. Fisher told you that he mentioned six or seven or eight times, and I don't remember exactly how many, and the things that he did state, and I think my recollection is correct, but use yours: He stated

59

that while listening to this Eddy Miller on a house phone, giving off a line to someone who he did not know who it was, that at that time he was talking to his office in Las Vegas. That is my recollection.

Now, in the report that he gave he stated that while he was talking, or observing Eddy Miller on this house phone, he was also on the phone the identically same time with one Paul Cook, FBI agent of Syracuse, New York.

Now, whether he was talking to Cook or talking to his office, I don't know. That is something for you people to decide as to whether or not it is credible. To me there seems to be a very significant inconsistency.

Well, the next Special Agent's testimony that I would like to comment very briefly is Special Agent Abby. He is the one, if you will recall, stated that somewheres along 9:15 on that morning he went to the residence of Lou Camerano, whom he didn't know as Lou Camerano, and from there I guess they went to the Churchill Downs place, and he was there for quite a while, and then they went to, I think it was a Dunnes Hotel -- yes, the Dunnes Hotel. And he made observations or he says he saw this Eddy Miller put several coins in the booth phone, and make a call, and to whom he

does not know.

And of course, the call, as I understand it, did go to 455-7153, but I don't recall any evidence in this case that that line that may have been transmitted by Lou Camerano, who I don't believe was Lou Camerano at that time, was ever used or ever utilized.

I think that this case, as far as these phone conversations and references made to the Las Vegas connection, I think that that really must stand or fall on the voice identification. Was this voice really the voice of Lou Camerano? You have got agents testifying that there was one Eddy Miller. There was nothing to indicate that that voice, that was transmitted by a person alleged to be Eddy Miller, was actually the voice of Lou Camerano.

Now, the only way that this was done was by Special Agent Scobie, and he was here and testified, and I think that he stated that he took up a station either next to Eddy Miller, or one away. I don't remember exactly, but I think it was next to him, if I remember correctly, and he said that he talked to him for one or 1 1/2 minutes.

He further testified on cross examination that he had never made any prior voice identifications.

We questioned him as to when he first heard the tapes and he indicated to you and me and the rest of us here some 5 1/2 months later the FBI from Syracuse area forwarded the tapes to him. That was June 24th, 1974, some 5 1/2 months after he had heard a one or 1 1/2 minute conversation in the Flamingo Hotel, a busy casino.

Well, it seems incredible that someone who is not trained in recognizing voices, under the circumstances where he over heard a voice alleged to be Lou Camerano for one minute, can suddenly 5 1/2 months later listen to a tape, and say, "Yeap, in my opinion it is the same voice." It is extremely difficult for me to believe that.

Now, I submit to you that perhaps, and I don't know, that when the tapes were mailed to Special Agent Scovue, along with it went a detailed report, outlining what the FBI agents in Syracuse knew, or may have known, and I believe that that actually formed the basis for the opinion that from that one minute conversation he could possibly say that that was the voice of Lou Camerano. I submit to you that it was not.

Now, one of the things that -- that I had hoped that you would take into consideration when

you deliberate, and I have mentioned it before, but there are things that are consistent, or -- I am sorry, there are things that are inconsistent, and in other words there is something here that is capable of two interpretations: One for the Government, and one actually for the defense. I think that in a situation such as those that with the heavy burden that the Government has, that you should resolve that in favor of the defendants.

In passing, also, I would like to say this, as far as that voice print: Do you recall when I asked Special Agent Holmes, the expert, I asked him whether or not he had ever heard Lou Camerano's voice before? He indicated in the negative; he had not.

And the second thing that he said to me which was much greater significance, and you remember he said categorically, "In my opinion, Lou Camerano was the line source for Joey D'Agostino."

He did not say that the voice that he heard on the tape was Lou Camerano. He did not give you his expert opinion that the voice was Lou Camerano. In fact he was asked, "Wouldn't it be true, Mr. Holmes, that in order for you to say that Lou Camerano was the line source, you had to assume one fact, which was not in evidence," and that fact was that he had to assume

that the person in the conversation that he had over heard, alleged Lou Camerano and Joey D'Agostino, the participants in that conversation, he assumed was Lou Camerano. And you may recall we asked if, in fact, Lou Camerano was not a participant in that conversation would then your opinion that he was the line source fail and he said, "Yes, it would," and I submit that it has.

There are some things that with respect to the physical surveillance I would like to say one word on. You will recall that this was something that both the Government and the defense attorneys agreed to.

Look at this physical surveillance, and it actually shows two people meeting in the restaurant, but it doesn't show anything else. It doesn't indicate anything about any connection, or any gambling. There is only bit of evidence that indicates there was ever any talk in all of the physical surveillance about gambling, and I think that Mr. Fisher mentioned that to you in his summation.

I am hopeful, ladies and gentlemen, that you will bear it in mind, that while there may be some smoke, there was no fire here. And while there

may be evidence, it is not sufficient, and if it is insufficient, it is not evidence at all.

I am sure that after you have heard all of the other attorneys, and you have heard Judge MacMahon instruct you on the law, I am sure that you will find that in no way was this a bookmaking operation in which five or more persons were involved, and I am sure that you are going to find them not guilty on all four counts, for Joey D'Agostino.

THE COURT: All right, Mr. Palmiere.

MR. PALMIERE: If it please the Court, Mr. Fisher, my colleagues at the defense table, and ladies and gentlemen: Each attorney representing his respective client is entitled to give an individual summation because each and every of these defendants is entitled to your individual consideration.

I am sure that you realize that, and I am sure that you will do exactly that, and I am sure that the Judge will charge and ask that you do give individual consideration to each of these defendants.

I ask for individual consideration in the case against Charles Grezo. I ask it because as I opened to you, I told you that our defense was going to be that Mr. Grezo was a bettor.

The Court, I am sure, at the conclusion

of the case, will charge you that bettors, according to his definition of bettors, that is the Court's definition of bettors, do not come within those men who may violate Section 1955, and Title 18, prohibiting the operation of merely a gambling business, and if he is a bettor, according to the definition of the Court, he commits no violation of conspiracy by merely being a bettor.

And so you see that this is one time, with respect to our laws, when an individual could come into constant contact with people that he may or may not know are conducting some sort of a gambling business; illegal gambling, and still not fall within the violation of the law, itself. This is not Mr. Grezo's law, and not yours and not mine, but it is this country's law. They say that bettors do not violate the statute. It was not meant or intended to apply to an individual who bets.

I told you during the opening that I would tell you that Mr. Grezo was not only a bettor, but in addition to that, he bet almost on a daily basis, and I told you that regardless of how much an individual bets, if he is doing no more than merely betting, than he does not violate the statute, regardless of the action that he gives a bookmaker.

Now, that is the law, and I hope that the Court will charge you in that regard, according to the definition in the law, as defined by him, concerning bookmakers and bettors.

Now, a bookmaker profits from the losses of others. He accepts bets from members of the public, and accepts bets from many individuals. A bettor places bets, even though numerous bets and he places them with one individual.

And in this particular case, that is what these transcripts show.

Now, the keynote of this particular case on behalf of my client, Charles Grezo, is the expert's own opinion. The expert states that it is his opinion that Mr. Grezo was conceivably a writer, conceivably a bookmaker, and more than a mere bettor.

Now, I say to you in the spirit of all candor, that when he says, "Conceivably," according to a literal interpretation of that word, the word is "Believes", or "Imagines", and when an individual says I imagine that this is what was happening in this particular case, that this was the capacity that Mr. Grezo played in this gambling business, he is not giving you the proof required to be convinced, with the kind of certainty that you should be convinced

before you return a verdict of guilty, and tie any member of this community, or any member of this country to a felony.

Now, I really did not appreciate the total significance of the expert being unable to say anymore than conceivably, or imagining him to be a bookmaker, or imagining him to be a writer, until I heard Mr. Fisher's summation. Again, before I get to that, I told you that the Government would not, on its direct case, at least, and not until we did some on cross examination, the Government would not attempt to explain to you the meaning, the significance, the meaning and significance of bookmaking, and I know that throughout the course of this trial, when certain terms were used before the expert got on, many of you shook your heads because you did not understand it. This being a very, very complicated case, complicated terms are involved, and complicated knowledge is involved in knowing the operation of bookmaking itself.

I ask the expert, on cross examination, whether it was true that bettors sometimes knew the mechanics of bookmaking even at least as good as, and sometimes better than the bookmaker that he is dealing with, and he said, "Certainly".

Now, and this is where I can agree with the expert when he says that my client is more than a mere bettor. My client is an expert bettor. He is a bettor with a system, a system that can really work, a system that I believe these transcripts have indicated, should indicate to you when you read them, has worked in his case.

Reading through all of these transcripts in December and January, and January 4, and 5, and 11, he was behind, he was plus $1,500 or $2,000, and meaning that the bookmaker owed him that money, and finally, as we got closer to January 11th, 1976, he was plus some $4,650.

Now, Mr. Fisher says he is a bookmaker. He is a bookmaker because of a quantity and a large amount of bets that he placed with Joseph D'Agostino. That is completely inconsistent with what the expert said.

He said he did not consider that as a factor in determining whether or not a bookmaker, because that is a large quantity of action, bet on great number of teams is consistent with that man being a bettor, and inconsistent with him being a bookmaker, and we will get into that in just a moment.

At any rate. I think that it is

important, if you will, and I ask you to please go back over some of the cross examination I had with Mr. Holmes, and when we discussed the line, and what is meant by the line, and when we discussed the Vigorish, or just for what it means for a bookmaking operation, or what it means to a bettor, and think of that example that I put on the board: Buffalo minus six, versus -- so, Boston rather minus six, versus Buffalo, with one bookmaker. And think of that same example with the second bookmaker: Boston minus eight, which in that situation would also be with a second bookmaker, Buffalo plus eight, and think of that example, and I think it will be as a guide to you in understanding our defense in this case.

Now, Mr. Grezo, being an expert bettor, had more than one bookmaking source, this is evident from these transcripts, also.

Joey D'Agostino tells him on numerous occasions, "What is the matter, can't you bet? Is the line too close?"

What is he talking about? He is talking about his line as it compares with other bookmakers' lines, because you see if the line is close, and if both have Boston minus six, then it is impossible then for that bettor to bet both sides in an attempt to

obtain a successful middle bet. That is very significant.

There are other occasions when Joey D'Agostino tells my client, "You are not going to get any bettor up there or someplace else."

Now, if that isn't proof positive that both understand one another, D'Agostino understands that my client bets him only when he can favorably bet on the other side of that contest, thereby preventing a loss in that game. Remember, now if you bet Boston minus six with one bookmaker, and Buffalo plus eight with another bookmaker, you are betting opposite sides of the contest. It is impossible for the bettor to lose, and Mr. Fisher and I don't criticize him for this, because this is a special knowledge, and it is knowledge that it is sometimes hard to understand, and if someone doesn't really explain it to you, and forces into your head day after day, and night after night, it is difficult, a difficult concept to understand.

Mr. Fisher told you he has got to be a bookmaker because when he bets both bookmakers he has a chance of losing both sides. But that is impossible. The expert said that to you. He said that that was impossible. When you bet Boston at six, and Buffalo

plus eight, the bettor then doesn't care who wins. Okay? Because if Boston wins the game, he wins the bet with that bookmaker. If Buffalo wins the game, he wins the bet with that bookmaker, and the only thing that the bettor loses is the Vigorish, covering the bets that he lost with the other bookmaker, and he loses ten percent of that bet. So if you bet $100 on Boston with one team, and $100 on Buffalo on another team, you don't lose $200, you don't even lose $100. But one time winning, and one time losing, the only thing you would do is lose ten percent of that bet that you bet with that particular bookmaker, or $10.

All right, then, you say why should Sonny Grezo being a so-called knowledgable bettor, that you insist Mr. Palmiere that he is, why does he bet that way? Well, because when that line is different with one bookmaker as it is opposed to what it is with another bookmaker, he has an opportunity for a very, very little risk, you see, very little risk of winning both bets, and then please take this example: Boston minus six with one bookmaker and Buffalo minus eight with another bookmaker with $100 on each side, all right? As far as Boston and Buffalo is concerned, it is impossible for both teams to win

on the courts, but with the bettor it is possible.

Now, let's assume in that example that Buffalo or rather Boston beats -- Boston beats Buffalo, and the game falls in between six and six. The game lines up with 107 for Boston, and 100 for Buffalo. He goes to the bookmaker he bet on with Boston and the game falls at 107, and at that particular time then he only gave up six points to that bookmaker, and he deducts six from 107, and the final count is Boston 101, and the other is 100, and he wins the bet. Similarly, he goes to the other side where he received from that bookmaker eight points, and the same score, the same score. It is 107 to 100, and you add the eight points to the score that Buffalo got. They got 100 plus the eight, and compare that with the score that Boston actually got, and Buffalo wins the game.

So, you see, going back to the example, you beat two bookmakers and it is impossible to lose anymore than the Vigorish, and when you don't catch a middle, even when the actual difference between the winning and losing does not fall in between the amount of points that you were forced to give up, and the amount of points that you received -- but however, there is a distinct possibility of catching a middle

when you bet that way, and there is evidence all through this that this is what Mr. Grezo was attempting to do.

D'Agostino knew it, that he was betting with other bookmakers. But what did he care? He was still getting his action. He didn't care if Grezo won with the other bookmaker or even bet him. There were other bets that were going to overcome the amount of money that he lost to Mr. Grezo.

So when you see references in this transcript to, "What is the matter, can't you bet because the line is too close," that is the reason that Grezo can't bet on this particular evening because the line is too close. He can't bet another bookmaker where the line is the same as it is with D'Agostino because then there is no chance for obtaining a point spread or a difference that falls in between the amount of points that he received from bookmaker B, and the amount of points that he had to give up with bookmaker A.

I know it is confusing. But think of that in terms of that example: Boston minus six with one bookmaker, and Boston minus eight with another bookmaker -- Buffalo, which then makes Buffalo, you see, plus six with the second bookmaker, and the second

bookmaker, if you have to give up eight points to bet on Boston, that bookmaker will give you eight points if you bet on the other side. Bookmakers do that in an effort to balance their own books.

Now, Grezo having the knowledge that he has with gambling, knows that bookmakers, from time to time during the course of a day, have to change their line because of a different money action that each is receiving on the particular number of sporting events that are bet that day. And of course, of the necessity to balance their books, bookmakers are going to change their line, and when they do change their line in such a fashion, and such a way that it is different than the first bookmaker, then that is the opportunity, you see, for the bettor then to get in the middle, to then bet with the idea that the point spread of the actual game falls in the middle. And that is what runs all of the way through this.

And Grezo commits no crime by betting with bookmaker A, and bookmaker B. Still, his profit, even though when he succeeded in winning a middle bet, his profit isn't just to the extent of his personal gambling winnings. When he bets one hundred he gets one hundred, and no more. And that is why he commits no crime, even though he bets two

bookmakers; opposite sides of the contest.

Now, Mr. Fisher told you that Grezo has got to be a bookmaker because of the number of bets that he made but remember now, the expert, himself, says a bookmaker would have to be crazy to give up, to give up $5,000 worth of the bets spread over 20 teams, and that is what you have in this case. Grezo is never betting substantially more than $300. It is $100 or $150 or $200, and sometimes it is $300. But you run down that list and you get January 4th, and January 11th, and there are more dates, but take those dates, and you will find that Grezo is always betting the same amount of money, or relatively the same; $100 or $200 or $150 or $300. He does not jump over that limit at all.

So he is making a small amount of money wagering a great number of times, and the expert says that the bookmakers say or figure he has got to win at least 50 percent.

So why then would a bookmaker give that action to another bookmaker? In doing so he would be getting rid of his profit which has been referred to in this case for the jurors as the Vigorish.

Remember, ten teams, and $200 a team and that is $2,000. Okay. If five win and five lost,

these bets cancel one another off, and no one wins or loses to the extent of $1,000 that was bet on the five teams. But the bookmaker always wins because he expects ten percent more from the bettor. So in that situation where you have five teams winning, and five teams losing, the bookmaker tells the bettor you still owe me ten percent of $1,000, and that is two hundred times the five losing teams, which is $100.

So it would be nonsensical for the bookmaker, therefore, to transfer that away and get rid of that profit.

All right, now, you say all right, how come if Grezo is so expert, why is he doing that with D'Agostino, and giving D'Agostino the chance and the opportunity of making the Vig? Why is he giving D'Agostino the edge? These transcripts here indicate that no one gets the edge on Grezo, and that is true. You have to again go back to the language referring to the knowledge of other bookmakers, because that is what Grezo is doing. He was betting the other side, hoping for a middle, a middle bet on one of those games. One successful middle bet would more than compensate him for his big loss to the bookmaker on the losing bets, and give him a profit.

Again, you will have an opportunity, and

I am sure you will have a pencil and paper in the jury room, and you can see that by just winning one middle, and winning both games with two different bookmakers, and let's assume that he bets five hundred with D'Agostino and five hundred with another bookmaker. If he is successful in catching the middle, he wins $1,000. He wins $1,000, and pays no Vigorish on that bet.

Now, let's assume that the bettor had five losses that day, at $500 a game. That is $2,500. The $2,500, offset by the other winnings that the bettor had, assuming a 50-50 split, he loses a big total of $250. One middle bet, $1,000, or $500 on a wager, and the $500 would give you $1,000. Let's assume that the bettor lost four, or even five, five bets because he did not catch a middle. All right, there were five games that he did not catch a middle, and on those five games he won from one bookmaker and lost from the other one, but the losing bookmaker, he pays only ten percent, you see. Certainly he has to pay the $500 to the losing bookmaker, but he receives the $500 back from the bookmaker with whom he won the other bets.

The expert agreed with all of this. The expert agreed that it would be inconsistent and

irrational for the bookmaker to transfer so much action where the action is the same amount of money on a great number of teams, and the amount of action all being the same amount of money. It is inconsistent because the bookmaker figures he is going to win five and lose five, and he is therefore going to win Vig.

The bettor who bets that way without betting another bookmaker is foolish because he is going to lose his Vig. He is going to lose, even when he breaks out 50-50 on the betting. But when he has got another bookmaker attempting to catch just one middle to win both ways on that one bet, he more than compensates himself for the loss that he sustains with the other bookmaker.

Remember, if you don't catch a middle, and maybe this is part of the confusion, if you don't catch a middle and just bet Boston and Buffalo, if Boston wins the game, you get five hundred from the bookmaker you bet with.

By betting with the second bookmaker you just lose five hundred to him and you give him that five hundred. Except you give the losing bookmaker a little bit more, ten percent, so it is impossible to lose the five hundred, or even the thousand. You can't lose both bets. You have -- one bet has got to cancel

the other out. So that the five hundred that you get from one you give to the other.

And in addition to giving to the other, the five hundred that you got from bookmaker A, you give him out of your own pocket ten percent or the interest. But if you bet one bookmaker for both sides of one game, and win $1,000, then that $1,000 is more than adequate to compensate for the Vigorish loss, and that is what bettors do.

There is evidence in this record all over the place with respect to my client not being a writer. How can the expert even say, conceivably, certainly that is not the truth upon which you can base a conclusion beyond a reasonable doubt, but I criticize him even for saying conceivably he is a writer. I went through with him what the writer does. His interests are the same as the bookmaker. When the bookmaker earns a profit, the writer receives a commission; when the bookmaker sustains a loss, the commission agent, or writer gets nothing; the interests are the same. So that if a writer is accepting bets from members of the public, he has got to hope, when he gives them to his bookmaker, that those bets all lose, all lose because that is the only way that he is going to get paid. He gets paid on the

commission of the losing amount of money. All right.

All through the record we see statements by D'Agostino, "You are killing -- you are slaughtering me. You could really jar me tonight."

Just many, many too numerous to even mention here, showing an inconsistency in interests. Doesn't that make sense? If the man was a writer, why would D'Agostino be telling him, "You are killing me. I can't make any money with you."

The interests have got to be compatible for an individual even to be considered as a writer, and in this case, the evidence is just the opposite. There is an incompatible interest between D'Agostino and Grezo, and an incompatibility of interests, ladies and gentlemen of the jury, and that immediately suggests what his interests should be as a bettor. He wants to bet that bookmaker. So when the bookmaker loses, he wins, and vice-versa, and that is the kind of evidence that you have in this transcript, incompatibility of interests between D'Agostino and Mr. Grezo.

Now, just one more point on this theory by Mr. Fisher that my client was a lay off bookie. He is saying to you that the action that he gave, that Grezo gave to D'Agostino, was part of the action

that Grezo obtained from customers on the street. Okay. He is saying that he had a certain amount of money, and he then looked at his balance, and said, "I want to get rid of x number of dollars," and he passed it on.

Now, knowing that that was going to be their theory, the silence in this courtroom was really deafening in respect to any witness or the Government in this case bringing one person, just one person who said that during this period of time, during January, this period of this conspiracy that they made one bet with Charles Grezo, and look at the action that they claim he gave to D'Agostino.

All right, $5,500 this one day, and we don't dispute that. Then $3,000 another day; we don't dispute that at all.

But you see in order for him to lay off $5,500, again remembering the importance of a bookmaker's balanced books, Charles Grezo would have had to have taken in from the street $16,500 in wagers in order to have laid off $5,500. You see, because that would give you approximately $11,000 on one side, and $5,500 on the other side, and my arithmetic may be wrong, and I am sorry. He has taken half of that

in order to arrive at a perfect balance wherein the bookmaker cannot lose, and at least he has got to obtain the profit from the Vigorish on that side of the ledger, whether those bets lose or not, all right.

In spite of that knowledge that that is what he would have had to have obtained from the people at Auburn, or the customers here at Auburn, or wherever he was supposed to be booking, I don't know, but they say that they could -- and they don't produce one person, one bettor, one customer who they want you to believe existed as a customer and bettor of Charles Grezo.

And you saw people take the stand and say that they were bettors in this case. This was not just an oversight on their part. Think of it, why they could not produce one person that would say that they gave Grezo any action at all where you could say that you are full of baloney. They did not say that your client accepted this and that, and that is why he was betting with D'Agostino because he was laying off. Not one; not one.

And I also think of this, too; remember that you go to that one exhibit of the Government where they show you the action that is given by each

of the persons shown on the exhibit, and on January 4th, and it will be the same thing on January 11th, and they make the largest contribution of bets into that particular telephone on both days, January 4th and January 11th, and I am sure that it is true every day here. There is no question about that.

But look at the times, look at the time it takes for nine men to call in their bookmaker to make bets that are far less than what Mr. Grezo gets in a short period of time. Now, remember, let's go back and keep in mind what bookmaking is all about. The bettor or independent bookmaker calls the one bookmaker that we are dealing with in this case. What is the line, and he gives him the line, and 14 or 15 teams down the line, and plus, or minus, and they discuss bottom figures, and everyday that happens.

Now, a bettor then takes that line, doesn't he, and he has got to study it. He has got to study to determine what is the best bet for him to make here. After studying it and comparing it with the newspaper to find out what professional basketball people maybe interested in, or if anyone is injured, and what is the best bet, he then calls his bookmaker

and makes the best selection.

They are saying that Grezo, on January 4th, took in $16,000, and $500 in action in that period of 30 minutes where each one of those bettors that he had would have to call him, and give the line, and they have to go out and study that line, and then call him back.

Now, if the other bettors calling these other people shown on this exhibit, if it took them 2 1/2 hours to bring in a substantially less amount of money, how the heck did Mr. Grezo's customers be able to do it in a substantially less time? Think of it. Think of the operation and how this works.

The bettors received the line, and he has to make up his mind and call back and this takes time, and you don't do it in the period of time in the cross examination that I brought out, during this period. It is 35 minutes or 25 minutes for this kind of action, when these other individuals took substantially more time, giving less action.

So that is another indication that the Government theory concerning Mr. Grezo is just all wet. I don't think that they really appreciated here the possibilities and the probability of what an expert bettor may do with the system. They just saw

all of this action going in, and they said, "Boy, he has got to be a bookmaker."

But you see, if he is betting the other side, and we have got evidence here that he was doing it because of the references that D'Agostino makes, that it is not inconceivable that he be just a mere bettor, and playing with the system, and risking little to gain a lot.

Now, previously I alluded to the fact that Mr. Grezo was always ahead $1,500, and next day $3,000 until finally $4,250, and I am sure that there was more than that because there is a discussion there about Mr. Grezo receiving some money between the calls.

Now, I don't mean to say to you that Mr. Grezo won all of that money, because you see by betting and trying for middles and betting opposite sides he had to lose some of that money to the other bookmakers, do you see? So if you, like us say that you take $55,000 on Boston, okay -- or I mean $5,500 on Boston, and you bet Boston, and then you call another bookmaker and you bet Buffalo for $5,500. Regardless who wins or loses, the bets cancel one another. There is no risk. There is no money that you put up. You don't have to put any money up but

just your credit.

But when you get that money from the losing bookmaker you pay the winning bookmaker, in addition you have to pay the winning bookmaker the Vigorish.

But look what you had a chance of winning if you caught the middle, for a small risk. You saw bettors that took the stand and say they lost $1,500, and that they bet four and five hundred a game. Does that make the bettor guilty of this crime because he bet so much money? You can ask one of the witnesses: Do you have sources, and do you know other bookmakers. One said he didn't remember. If he bet that kind of money without another bookmaker he was foolish, and there is no question about it, and he took a heck of a risk. But that is not the risk that Mr. Greco took. Mr. Greco took no risk at all.

I just ask you to please try and work this out in the jury room and you will see it; you will see it.

Now, the judge is going to charge you, at the end of the case, I believe, concerning the relationship of one bookmaker to another, and I think that at the end of this case, when you get this charge, you will see where this begins to make sense.

a great deal of sense to you. You see everybody in this case, and my client is accused, and you have heard the expert say it, not of financing, or of managing, and directing this business but he is accused of conceivably being a writer. A writer conducts? And that is the other word in the statute, you conduct an illegal gambling business, but I think that I have talked to you enough about why he is not a writer.

Also, similarly an independent bookmaker who does not share in the profits in the other bookmakers, the Court will tell you could conceivably conduct the business of bookmaker A, but before you can conduct a second man who even the Government, assuming that the Government is correct here, and Mr. Grezo was an independent bookmaker, before you can even begin to consider whether or not he conducted the operation of D'Agostino, you have to see whether or not there was a mutuality of benefits.

You see, if Mr. Grezo was a lay off bookmaker, and was laying off to D'Agostino, all right. Then Grezo does no more for that operation than a large bettor. D'Agostino would be doing something for Grezo's business. He would be, by taking his lay offs, helping to insure him a profit,

but taking the number of bets that are -- that far exceeded one side or the other, D'Agostino is saying, "All right, I will help you in this situation. I am helping you to maintain a profit. I will take the gains that you think are going to lose here, where you have an excess of one over the other. And by him doing that, D'Agostino then does help Grezo conduct his business, if Grezo was an independent bookmaker.

But, Grezo would not be conducting D'Agostino's business, because Grezo has not accepted one lay off bet from D'Agostino. Go through this whole transcript here. No indication whatsoever that Mr. Grezo ever accepted a bet from D'Agostino; not one.

That is another reason for punching a hole, a wide gaping hole into the prosecution's case, because if you were two independent bookmakers, Grezo versus D'Agostino, both are going to be doing something for each other.

He says if you want me to take your bets, you better take some of mine. But there is no evidence of that, whatsoever. Why? Because he knew that Grezo was a bettor, a middle bettor, betting two straight bookmakers and that he had no excess from

customers to transfer over to him. So the Government can't have it both ways. If you have two independent bookmakers, both are going to be accepting lay offs from one another, and Grezo making lay offs to D'Agostino does not indicate that Grezo is conducting D'Agostino's business. It means the opposite because he is helping to insure Grezo's profit in this particular business.

Grezo is not taking anything from D'Agostino, he is not helping to insure D'Agostino's profit by accepting lay offs because he doesn't accept one lay off. It just isn't here. And I tell you that because there was nothing.

Another thing independent bookmakers do for one another, they all have their lines. They all call one place, or several places, and they get their own individual lines, and they call each other up, and they compare it. That is if they are friends and working together. Where did you see any evidence of Mr. Grezo calling him up and saying, "Joey, these are mine," and giving him some 20 different teams, and maybe minus four, and three and six? You don't get that at all, you see. Why? Because it was not necessary for Mr. Grezo to have his own line. He wasn't accepting bets of the public. It was necessary

for him to find out one bookmaker's line, and then right away call another bookmaker and see what the difference is, you see, and that is what is happening here with Mr. Grezo. He was doing this. He called D'Agostino, and it was Boston minus six, and call you back. Does he say that all of the time, call you back? What is he doing in the meantime? Calling somebody else? What have you got for Boston? Minus eight? All right, give me Buffalo plus eight, and he is telling that second bookmaker that.

He calls Joey D'Agostino and says, "Give me Boston, minus six."

Now, he has got an excellent chance for a middle, and the game falls seven, and he wins both. That is his system. That is the system that we have got in this case.

How many times have you seen a couple of days here where Grezo calls D'Agostino, and he even bets on the call. How does he know? He is getting a line for the first time, and he bets him right away for two or three games. What does that mean? How could he have done that? There was no time for him to hang up and relay the line to bettors, and he says, "Give me x number of dollars in this game, and right away. When he bets on the call it means that it is

impossible for him to be betting customer bets with D'Agostino. They have got to be his own because he is receiving a line and making the bets the very same time. No way can he get the line on the bettors while he is still on the telephone with D'Agostino. What happened in that case? Simply that Greco probably called the second bookmaker first, and got his line. Boston minus six. And then D'Agostino was Boston minus eight, and he knows what his bet is going to be.

"All right, Joey, I want Buffalo minus eight."

And then he calls the other bookmaker back and says, "I want Boston minus six." I hope that I have not messed up that example.

But that example, if you think of it, you are run all the way through each and every one of these bets that were made in this case. Just keep that in mind.

So it is impossible, you see, for an expert to give only one interpretation for a particular conversation. He doesn't know what the man may be doing, or the system that he is using, and he admitted the system of middle, and he said it is common; it is common.

Certainly he had to say it was common

because mathematically it can work out.
Mathematically it can work out.

Now, just one point with respect to the other count. I don't know, for the life of me, what the Government theory is concerning that count dealing with the use of a telephone facility to promote managing illegal gambling business. First of all, if Mr. Grezo is a bettor, or if you are not convinced he is other than a bettor, then, in my humble opinion you would have to acquit him of that charge, too, because that charge says, "Use with intent to promote an illegal gambling business."

A bettor on the street, even though he knows his bookie received the Las Vegas line, he doesn't commit a crime by using that line to bet, and that is what Grezo was doing; using that line to bet.

Now, he may or may not have known it was a Las Vegas line because you remember the expert said it, he said that the lines all come in from Vegas, and sometimes to a Buffalo bookmaker, and he calls Syracuse, and they call Auburn. That conversation of January 4th, how did that show that even Grezo was aware of the fact that he knew that D'Agostino was getting the line directly from Vegas. The implication is that he was aware that the Vegas line was coming

in at 12:30, in three hours, and coming via Buffalo. But even if he knew that it was coming directly from Vegas, as a bettor he does not use that line then to promote an illegal gambling business because as a bettor he is not conducting an illegal gambling business, and he wouldn't be in on those counts, do you see?

Now, in conclusion I would just like to say to you: I told you what our defense was going to be, and I attempted to demonstrate why that defense is a cogent one; why it is not unrealistic. Through cross examining the expert he did admit and made statements concerning the possibility of these happenings. Referring to the record, you are going to see that, and you are going to see that Grezo was using more than one bookmaker, and sometimes two additional bookmakers, and you are going to see that. You can see when the line is close, that you can't bet that night because the line is too close. That is a definite example of my client trying to bet the middle.

But at any rate, we are defending him and I am sure, and hopefully at least that we are doing fine, and I certainly don't want to invade the province of the Court, but the Court is going to tell

you at the conclusion of this case that before you can convict my client or anybody else you must be convinced beyond a reasonable doubt that he either conducted, financed, managed, directed, etc. an illegal gambling business.

In my humble opinion, we injected this defense here of betting. I think that it is realistic, and I think that we have proven it, I really do. But, you don't have to believe that we proved it beyond a reasonable doubt to acquit Mr. Grezo. You have to determine whether or not the Government, through Mr. Fisher, has disproved that defense beyond a reasonable doubt, because at the conclusion of this case if it is in equal balance, maybe a bettor, or maybe a bookmaker, or maybe a writer, and maybe more than a mere bettor, but that doesn't mean that he is an expert bettor. He certainly never told you what is meant by a mere bettor. He just said a mere bettor. You cannot be convicted of this statute for being a mere bettor, because you could be an expert bettor, and more than a mere bettor. Grezo, as opposed to someone else, you see.

So if at the conclusion of this case you don't know, you are not convinced, and Mr.

Palmiere be right that there is a lot of evidence that points to this, that there is a doubt, and a reasonable doubt, I suggest to you, because they had the burden of disproving that defense beyond a reasonable doubt, and I say to you that their failure to produce one witness in this courtroom to demonstrate that they gave even $50 to Mr. Grezo to make up the $16,500 that Grezo had to have taken off the streets of Auburn, their failure to do that demonstrates their inability to find that, and it demonstrates their inability because there was none.

Imagine the FBI on that one surveillance! Imagine how many FBI agents were involved in that surveillance. How many agents worked on this case? They knew who Sonny Grezo was. They knew that on one occasion, and the latter part of December he used a telephone here locally. They knew about him on December 21st, which is the beginning of the electronic surveillance. Do you mean that they didn't bring in one surveillance agent into Auburn? It is not that big a town, and they see Mr. Grezo at this coffee shop, or that coffee shop, and see if people are giving him money, and if he is writing things down, so that they can testify to that, or find out who the people are, and subpoena them to the Grand

Jury. Why didn't they do it? I suggest to you that they didn't because there weren't any of them.

On two occasions from December 21st to January 11th, almost nothing. From December 21 to January 11th, there is one or two occasions, I believe, and I think it is on January 4th that Grezo told D'Agostino, "Take it on, I'm loaded." Please read that closely. Grezo never tells him that I'm loaded, you see, until D'Agostino says, "What are you doing to me?"

"I am giving you to him, Sonny, because he has already reached his limit at $250, or two fifty and the bottom line is 3090 1/2, or 3090 two and a half, or that is the limit, 2 1/2. Grezo wants more. This is because he has got a big spread on those odds with that other bookmaker, and he wants to slaughter this guy, you see, and he is begging to give him more. And D'Agostino says to him, "I can't." He says, "Come on", and he says, "I am loaded -- I am loaded."

I suggest that he is loaded with the other bookmaker and he has got a lot bet on that game, and he wants to even it off by betting the same amount. When you get a point spread of, ladies and gentlemen, three or four points, or even two points.

there is a saying in the gambling business to bet your house. Bet five thousand because you can win ten thousand with a risk of only five hundred if that game falls in the middle. And that is what we have got in this case. Sonny is begging him, and conning him because he wants to knock his block off, in a friendly way.

That is what [illegible], or those terms mean. Remember, only two or three occasions it happened, and when you read you will see that D'Agostino always expressed a reluctance to take any more, and that is when Grezo would come back and importune him to please take this bet. He is such a big bookmaker that he receives $16,500 from the streets of Auburn, and would he call D'Agostino at his house and tell him to take fifty. With $16,500 in total action? Do you mean to tell me that a bookmaker of that size couldn't absorb a $50 loss? It is ridiculous.

I ask that you keep in mind the Government's burden of proof in this case, and keep in mind what we attempted to demonstrate for you, and I am sure that at the conclusion of this case, when the Judge charges you, that you will begin to realize, hopefully for the second time, and I am sure that you will realize it now, and I am sorry to even mention at

this particular point, but I am sure that you understand as jurors that you sit there, as a bulwark to our democratic system, really, and we can get emotional and kid around and everything else, but now it is an important occasion in our lives whether Grezo is stigmatized as a felon or not, and it is an important matter to him and I asked him to don't compromise.

Some of you may say he is not a bookmaker but guilty of conspiracy, but that none of the others are guilty of one of those other charges. Believe me, we do not want to compromise here. If you want to convict us, do it on all, but I suggest that you should not convict us on anything in this case, and the only people standing between conviction and acquittal is you.

And I know that you will do your jobs, and I thank you very much for the effort that you put into this case, for the attentiveness that you gave to me, and the other lawyers when it was so hot, and I hope that I did not bore you, and I will stop boring you now and quit, and thank you very much.

THE COURT: We will take our luncheon recess for the usual half hour.

(After a short luncheon recess the

proceedings were resumed.)

THE COURT: Mr. Rydelek.

MR. RYDELEK: Ladie, and gentlemen of the jury: When I left this courtroom last Friday, a friend of mine stopped me in the hallway and said, "Joe, how do you expect to overcome all of the evidence that has been presented in this courtroom? They had tapes and transcripts, and the members of the FBI testified," and to be honest with you, it is a tough question to answer because of the nature of the evidence.

However, I believe that there is an answer, and I believe that after you hear the charge that Judge MacMahon will give you, and you apply that interpretation of law with the evidence that has been presented, that you will have an honest, reasonable doubt about some or most of these defendants.

Now, Judge MacMahon and Mr. Fisher, and all of these people have worked hard and they have done a good job. Now the big job is yours. You have the awesome responsibility of deciding the fate of six men. This is a very, very serious matter. It certainly would have a great affect upon these men and their families.

Now, you could take the easy way out.

When you get in there and start deliberating you might get tired, and you might be confused, and you might say to yourselves, "Well, these people are involved in some kind of a bookmaking operation and let's convict them all, and we will get out of here."

I know that you are not going to do that. I know that you are fair and honest people and I know that you will consider the evidence as it applies to each defendant, to everybody involved here.

With respect to Lou Camerano, in Counts III and IV and V, he is charged with using a telephone to call Joseph D'Agostino and possibly that Joe D'Agostino called him to discuss betting information with an intention to use that betting information in an illegal bookmaking operation.

Now, just generally, let me comment on the evidence against Camerano. Officer Holmes testified that from all of the tapes that he read, that apparently if this was Camerano, he was involved on some four telephone calls, and for a period of approximately eight days, and I ask you as reasonable people if you think that that type of involvement makes him a co-conspirator in a large bookmaking operation, and would there be an honest doubt in your mind, just from that fact alone, because I think that

that is about all of the evidence that they have got here against him.

Now, as far as voice identification: You will recall that the FBI agent claimed that he over heard Camerano talking on the phone in Las Vegas, but not on the telephone instrument, itself. He also claims that he and another agent talked with Camerano some five months later at his home, and questioned him about his involvement in this case.

There was some question about how long the interview took. He said 15 minutes. In other words, he claimed that he talked with that man for 15 minutes, yet he also admitted that Camerano refused to tell him anything. Camerano would not sign anything. Camerano denied any involvement or any knowledge of these people or of a bookmaking operation.

I submit to you; consider a 15-minute interview, would it take 15 minutes for this man to deny that he knew anybody or to say, "No, I won't sign that."

I think that later he went out and showed them his driver's license.

So the identification of that FBI agent in my opinion is very questionable. He admitted, when

Mr. Rinaldi cross examined him, that when he got these tapes with the canisters that they came in, that the canisters had on it "Camerano -- D'Agostino."

Apparently somebody in the Federal Bureau of Investigation wrote those names on the tapes. So Mr. Scobie, who is being called upon identified voices that already had names on the tapes. This is in the nature of hearsay, as far as I am concernad.

Yet he came into court here and said, "Yes, that is Camerano's voice. I talked to him a couple of times. I heard him talk on the phone."

He never compared Camerano's voice with any other sample of his voice that was taken from a tape or telephone. This is the unusual way of identifying a voice.

Now, use your own recollection of the tapes that you listened to, and I think that all of you could honestly say that several of those people on those tapes sounded alike, especially the ones with the deep voices.

When you talk to somebody on the telephone in everyday life, they usually sound different than they do on the telephone. The telephone makes them sound deeper or different. Use

your own recollection on that.

I don't think that Agent Scobie is a voice identification expert. I think he was called here because he was involved in the case, and we won't admit, or I won't admit that Camerano's voice was on those tapes. I wanted them to prove it. They did not bring another witness in here to identify that voice and I think that they could have if they felt it really was.

Now, ladies and gentlemen, Agent Scobie -- Abby, and Suban testified that they saw or over heard Camerano on two occasions giving a line to somebody on the telephone. Now, Abby testified that he walked right up to Camerano when he was on the phone in the Dunnes, in the mezzanine, and he said -- he stood right next to him and the man was reading a line, and he continued to read that line.

I submit, ladies and gentlemen, that Camerano was not concerned about the fact that he was giving a line to somebody. Recall also that Holmes and Suban testified that it is a common thing to discuss lines in Las Vegas. They are posted for the public to use. People go out and use the phones there, and they talk about the betting line because that is a way of life out there.

Remember that this defendant is a resident of Las Vegas. He has lived there for several years. For him to do something like this is not unusual. The question is did the FBI treat him fairly; did they tie him in here directly or honestly as the man who was Eddy Miller, or the man was making these calls?

Now, one piece of evidence here is that slip from the Nevada Telephone Company indicating a call from 735-9447, a number in Las Vegas, to 455-7153.

Now, this telephone record, the yellow sheet that Mr. Fisher showed you, does not show who made that call or who received the call. Also, there was some comment about a book, and I believe found on Mike Beach with the name "Ed Miller" on it, and also with a number apparently in Las Vegas somewhere, a 735 number. When you deliberate, you can look at these exhibits.

Now, at the time that slip from the telephone company tying that slip into evidence, and trying to tie that book and that name Eddy Miller, and that Las Vegas number into evidence, the Government relied on testimony from these FBI men. They had to, because had they not seen somebody that they claim answered the page, and then give the line,

and they claim that they heard the numbers that he made, had they not tied that person in, Camerano wouldn't be in this courtroom.

Do we have to believe all of this FBI testimony? I think that these people are human, and I think that they were pretty anxious here to tie somebody in as the voice who made those calls.

Now, I have the greatest respect for our FBI and I am sure that most Americans do. I want you to think about the one portion of evidence that went in here and then we will see what I am talking about.

When I cross examined Agent Supan about the call at the Flamingo, you will recall I cross examined him for at least a half an hour to try and get him to admit that he could have been mistaken about what he claims Camerano said on the phone, and he was adamant, he said, "No, I heard it. I was in a different part of the room. I wasn't distracted. I was right next to the man."

He said this, and I asked him again, "Are you sure, are you sure --" he said, "I missed a couple of teams."

I said, "Are you sure about the phone number that was written down on your card?"

"Yes, I heard this phone number."

I did not know at that point that he had written a different phone number down. I quite honestly was trying to show that he could have been mistaken in his testimony about what this man was talking about.

When I looked at the card I discovered that it did not have Joseph D'Agostino's phone number on that original card that is Exhibit B. It is a critical piece of evidence in this case, and I don't think that the Government explained later how that number that was D'Agostino's number was 455-7153, and the number on the card was 457, and then some other numbers. All that we can infer from that notation, from the original evidence, was that Camerano was talking to somebody on the phone, someplace, but necessarily Joseph D'Agostino.

Now, to top it off, when Mr. Suban went back to his office he wrote out a report in pencil, or in his own handwriting, which was a more full report from what he had observed. And in this report he put down the phone number. I assume that he put down the number that he had on this card in the beginning. But quite conveniently, somebody erased that number. Look at that Exhibit, Exhibit C. That number was changed. They cannot refute it. He

admitted it.

So I say to you, ladies and gentlemen, that this evidence, tying Camerano in here, although it looks strong, and it looks like he is guilty, it is tied in because of these FBI reports, because their testimony, and I say to you that because of the fact that they changed evidence here, they actually altered evidence -- they did not give him a break because of the fact that they identified his voice with a gentleman who is not a voice identification expert, that you can have a reasonable doubt after you consider all of this evidence, and I ask you to give him the benefit of that reasonable doubt.

Thank you.

THE COURT: Mr. Weinstein.

MR. WEINSTEIN: Judge MacMahon, and ladies and gentlemen: This has been a long trial, and I have appreciated your attention throughout.

At this time I am going to exercise my opportunity to sum up to you and I want to emphasize to each and every one of you that nothing that I say is evidence, and along the same line nothing that Mr. Fisher said is evidence. All that we are trying to do is seek to interpret the evidence in a reasonable fashion.

108

What I am going to attempt to do is interpret the evidence for you, and I believe that the evidence will show to each and everyone of you that Beach was actually what I told you he was, he was an acquaintance of Sam Ebare, not involved in any type of criminal activity.

Now, we are only concerned with Counts I and II of this Indictment. He is not charged with Counts III to V, and I believe when all of the evidence is brought to your attention with reference to Beach, that you will say to yourselves, "There isn't proof here beyond any reasonable doubt."

Now, in my opening statement I said something to you, and I want you to hear me well now. I want you, with me, to look at this evidence and look what wasn't there, and wasn't proved, as well as what was, and therein lies the question, ladies and gentlemen.

Now, I think that you realize, when we do this, that Beach was the sacrificial lamb in this conspiracy. He was the insurance man. The Government had obtained five people that they believed were involved in some type of illegal gambling business, and they needed some insurance. They looked around, and saw Mike Beach with Sam Ebare, and that is

where they got it. That is where he is, and that is why he is here.

Now, in Mr. Fisher's opening statement he said that he would show that my client was a major collector or conductor. He did not prove that. His own expert wouldn't go so far. The only thing that expert could say about Michael Beach is that he was a trusted friend; a trusted friend.

Now, let's look at some of the evidence, ladies and gentlemen. Monica Sims, the first witness that was called, she did not know Mike Beach and never heard of him. He had never been to her apartment and never used her phone.

The only live witness that had anything to say about Mike Beach was James Colloca. Consider a few facts. We have a man here who is a daily bettor. He claims he worked with D'Agostino over five months, and that -- excuse me -- Beach was around four or five times to collect. One time at the Pink Pussycat, which is a bar in Syracuse. He also said that he called Beach. He didn't know his name, and he identified it from a picture at the Grand Jury.

Now, let's look at what wasn't there. Let's see if anything supports what Colloca had to say.

First, the surveillance. Now, there is a

stipulation in evidence, and in that stipulation which the Government prepared and we agreed to, there are two references to Colloca and I am going to take the time to read you the only two references in the surveillances as they relate to Colloca.

The first one was October 22nd. Jim Colloca went to the Pink Pussycat Lounge in Syracuse, New York, arriving at 10:03 p.m. At 10:25 Colloca and Joseph D'Agostino emerged from an unused rear banquet room. Thereafter D'Agostino and Colloca joined Samuel Ebare for about five minutes at the bar.

Then the next time, on October 30th, 1974, James Colloca and Sam Ebare were at the bar in the Chartroom, in Oswego, New York, and an agent sitting nearby over heard them discussing how much money was owed, and he stated at one time that he made 14 calls a week up here and that it cost him forty a month just on phone calls. Some of the conversation was unintelligible to the agent. A figure of $498 was over heard, and Colloca made the statement that it was all down in black and white.

These are the only two items of surveillance with reference to Colloca. There is no mention of Beach.

Now, there is no mention meeting at the

Pussycat Lounge, no mention of that.

Now, he said that he had a conversation with him at the number where Joseph D'Agostino could be reached. Look in your transcripts. There is no statement whatsoever that Beach and Colloca ever talked to each other.

Consider this, if you will: This man stated that he placed bets with D'Agostino over a period of five months, and that a collection took place once a week, a total of 20 collections. He says Michael Beach came around four or five times. What about the 16 weeks, ladies and gentlemen of the jury? Where is the proof?

Now, let's take a look at Mr. Colloca again. We have a man here who was involved in gambling up to his neck. He is a convicted falon, and a criminal. He admitted under oath before the Grand Jury that he had memory lapses. He admitted he has had four heart attacks. He says that the medication that he takes has a lot to do with the fact that he has a bad memory. He was shown a picture of Michael Beach at the Grand Jury. He didn't pick him out and say this is Michael Beach. He just said "Yes".

Ladies and gentlemen of the jury, is this

man lying? No, he is not lying to you. What is he? He is a sick, mistaken, scared old man who somewhere in those memory lapses pulled in Michael Beach.

Ask yourselves; look at this evidence; this is the best that the Government had. This is the only live witness that could say a thing about him. This is the best that they have. I think that you can look and say that I have a reasonable doubt as to what James Colloca said; a reasonable doubt.

Now, let's go to some of the other witnesses. James Keller, an active bettor, and he lost sums of money, and at one time he asked to see Sam, and Michael Beach was present.

Now, Mr. Fisher brought up the comment that Michael Beach was there and he admitted that he didn't say anything, and he admitted that he didn't do anything. But implicit in Mr. Fisher's comment was the fact that Mike Beach was there for intimidation.

Ladies and gentlemen of the jury, look at him. If you are going to bring along somebody to intimidate a man are you going to bring along a 98 pound weakling? Are you? No, you are not.

Look at Jimmy Keller. He is built like a baby bull. He could have thrown Ebare and Beach through the window in each arm. Is this the guy that

you are going to bring along to intimidate anyone? Is this guy a collector? Come on! Come on. Now, Beach said nothing. He walked away. He couldn't have cared less. He was Sam Ebare's pal, that is all.

And we asked if he dealt with him and he said no, he has never dealt with me. He never gave him any money. There is no proof of that. He never gave him any line information.

Again, look what isn't there, and he said to the best of his recollection they had always been sidekicks, and when I asked Mr. Keller if they had any business connections he said not to his knowledge. Now, if this man was a manager, if this man was a collector, as the Government would have you believe, wouldn't there have been more? Wouldn't you have seen an active role?

Now, was Jimmy Keller lying? No, he wasn't lying. He came in this courtroom and bared his soul to you. He talked about the defendants and there was nothing said about Mr. Beach. No, he told you the truth and he didn't suffer from memory lapses.

Again, look what was there as well as what wasn't there.

Visconti testified, another bettor, another man who had lost money. He never dealt with

Beach, and never knew his name. There was no connection proven there.

Again, there is a man that owed Joey money. Isn't it logical that if Beach, in fact, was a collector or if he was a manager or if he was anything that he would have at least been known to Visconti? And Cook, the man they tried to tell you is a co-conspirator. All of his dealings were with Joey. He said Joey handled the problems. He was never approached by Beach; Beach never paid him any money. He said he didn't even know Beach. They had nothing to do with each other.

Look at these witnesses, and then look at Colloca, and ask yourselves in light of Mr. Colloca's demeanor, and in light of the way that man sat on that stand, the way he talked, and his memory lapses, and his heart attacks, and his criminal record, do you believe him? That is the best that they had, and the only one live witness, the one who could say a word about my client.

And I believe that what he said should be subject to a great deal of scrutiny on your part.

Now, there was a search of Ebare's apartment. There was no evidence whatsoever that Mike Beach or anybody else had ever been there. And

115

then there was a search of a vehicle. You remember on cross examination it was pointed out that all of the exhibits in that vehicle were on the passengers -- no were on the driver's side. Beach was the passenger. And what about these exhibits? They were outdated racing forms of some sort. They proved nothing, nothing again except that Mike Beach was with Ebare, and that is all, and that has been my contention.

Now, there was a search of Michael Beach, and what did they find? They said as he got out of the car he had things under his arm, and I think that you can assume from that that he had just picked them up. And what were they? They were things with writing on them and address books which I will get to in a second. Very interesting. There was no proof whatsoever that anything with the writing on it was Mike Beach's handwriting.

The address book? Well, a very important name was left out of that address book, the name of Colloca. The name of Colloca, and if you look at this address book you will see that it is just that, an address book with names and addresses. Eddy Miller's phone number in it. There is nothing illogical about that. We know that these men knew each other. Not Miller, but D'Agostino knew Beach because he called to

him on the phone, and what is so uncommon about the fact that the number D'Agostino used for taking bets was in his book?

Again, we know that he called him. The address book doesn't show anything except for the fact that Colloca's name wasn't in it. Colloca's number wasn't in it. There were no lines in it. And again, look at what wasn't there. There was no names listed of amounts that people owed. There was nothing like that. It is a bachelor's address book.

And here is a man who is a big shot, a gambler, right? A collector, a manager, or a supervisor? How much money did he have on his person? Four bucks, $4.00 he had in his wallet.

Now, again, I think you can find reasonable doubt.

Now, let's look at the surveillance, and again let's look to what wasn't there, as well as what was. Again, ladies and gentlemen, and it bears repeating: There was no proof that Colloca and Beach ever met. There was no proof that they ever met at the Pink Pussycat Lounge and there was no proof that Beach ever went to Oswego. Further, most of these surveillances centered around meetings that Beach would see Ebare, and then would go out for coffee.

They would go here and there and see each other, and see other people. It appears as though the surveillance was not on Beach, but was centered around others.

Again, not one separate piece of surveillance where they followed Beach alone. Beach was an afterthought. If they believed that he was really involved wouldn't they have had more?

Now, for a moment, let's eliminate Colloca and let's eliminate the surveillance, and everything but the tapes, and let's focus our attention, if you will, on them for a moment. And let's show exactly what they show.

First, Beach called in a number of times for a line and was given the line, just like many others. Nothing unusual about that. He called in and got the line.

Secondly he called for R. K.'s figure just once, and that is the only time. They have him calling in for a bottom figure.

Now, you heard the tape and you are aware that there are many tapes. Look at them. Look at the tapes. Only one time did he call in for the bottom in 45 days.

Beach was trusted by these men, and they

all trusted each other. Now, what is so uncommon about him calling up and asking for the bottom? If one of you give me a check and it is written for a certain amount of money, and I called the National Bank of Auburn, they will tell me if that check is all right. They will tell me if it is covered. This is not an uncommon event in the gambling realm, or in the realm of business. But the Government makes a big deal about it because that is all they have, just one instance; just once.

Now, on four occasions Mr. Beach was given the amount wagered on both sides of a sporting event. Well, when we go to the races we have the benefit of looking up at the tote board and seeing where the money is. They don't.

He probably wanted to know where the money is. I don't know why. But I can say this to you; that is all he asked for, what the money was on both sides. And the experts said that this isn't commonly given. But it is given, it is.

Now, there were many conversations between Beach and Ebare: Where are you going to be, and this is again consistent about my defendant. Now, interestingly enough, at one point Beach referred to Ebare as "The General." Well, I may be facetious

but there is no where do they show him saluting, and no where is there any reference made that he is a colonel or a lieutenant. He called him a general.

On Page 112, and I won't ask you to look at this unless you want to, you can see in a conversation between Beach and D'Agostino where Beach is told or he is asking and he says, "How are you doing," and not "How are we doing."

If he was involved he would have said, "How are we doing."

He said, "How are you doing."

In the Ebare section in the back, and you don't have to look, but the first conversation says between Ebare and another unidentified male, he says, "I am going to see Ray and Joey."

He doesn't say Mike.

Then on Page 4 in the back of the Ebare testimony, a very interesting conversation that Mr. Fisher chose to make a great deal about. This is where Beach calls up and talks to Kathy Gell, and he says to her, "Pry me up a little Christmas cash. Pry it for me."

Now, does it seem logical to you that is this man held the high advisory position that they say he did that he would be calling up and asking his

girlfriend to pry him up for a few bucks? No. Very, very illogical.

So let's look at what these tapes prove very quickly. He asked for one bottom mark; he calls for figures on both sides of the game; he calls for a line but the majority of the calls were of a social nature.

Ladies and gentlemen, I suggest to you that instead of convincing you beyond a reasonable doubt, these tapes should raise a reasonable doubt.

Now, why? Because this was a 45-day wiretap, and look what isn't there. Now, let's look at what isn't there, and what isn't proven, as well as what is. There is no conversations between D'Agostino and Beach and Ebare concerning the collecting of money which was what Mr. Fisher would love you to believe. There is nothing there concerning the payment of money. There is no conversation between Beach and anyone else concerning Cook, Colloca, Keller, and concerning any of these people. No conversations whatsoever.

I don't think that there is any business discussions there. He asked for R. K.'s figure. One figure out of all of those times, and he tells you that he is a high person in this organization? One

time.

I suggest that if, in fact, he called up and wanted to know people's figures everyday, that would have made a difference. At least it seems to me it would. He called up and asked for the line, and that is all he does. He just says what is the line, and he is given it, and he calls up and he asked for the amounts wagered on each side and that is all, and nothing else.

In 45 days of conversations I think that you can look at these tapes, and say, and clearly say that there is not one instance where it is clearly shown that Michael Beach, beyond any reasonable doubt, is involved either in a conspiracy, or in any scheme where there is gambling.

It isn't logical and does it seem logical to you as intelligent individuals and members of our society that if this man was involved in this conspiracy that there would have been more?

Now, let's turn to this expert for a moment; this man is an employee of the Federal Government and he works for the FBI, and after listening to five hours of cross examination by Mr. Palmiere, I find it hard to think that this man is an impartial expert. This man is very partial, very

partial to the Government. It is important to him that his testimony is believed and without him their case falls by the wayside. If he isn't believed, his reputation is hurt. That man wants a conviction.

Now, what did he have to analyze? He had the composite tapes; that is all, and it is interesting that that expert never used the word "Colloca" and did not come in at all. He never used "Colloca" and he never mentioned Cook. He wasn't here to see Colloca fumbling on the stand. He wasn't here to listen to any of the others who never heard of Beach. He looked at the tapes and the best that he could say of Mike Beach, the best that he could say was that Beach was a trusted friend. And on what does he base his opinion? One bottom figure. R. K., one bottom figure, and four times that Beach was given the amounts wagered on either side, and that is what he based his opinion upon.

Now, I ask you; is this enough? Is this enough, and what if he was a trusted friend and what does that mean? So he knew these men.

That is my defense, and he said that these amounts weren't normally given. They weren't normally given, but they were given. They were given on occasion and they were given to some people, but

that doesn't make him a criminal. That does not make him a criminal, and again, I believe that a more active role would have had to have been proved.

Look at what is not there. No proof that he is a collector like Mr. Fisher said, and that is what he said that he was a collector. This man is a collector? No. That was the best that the expert could say, a partial and biased man. The best that he could say was that he is a trusted friend, and his opinion was based on those composite tapes, and he also said that he could be wrong; he could be wrong.

I think that there is some reasonable doubt with reference to his opinion.

Now, all of this evidence may show that possibly one or two individuals were involved, and you may find that there is a violation of the State law. But that is not what you are here for. That is not what you are here for.

Mr. Fisher makes a great deal in his summation about Mr. Beach; a great deal. He made more noise than anybody else in the courtroom about Mr. Beach, because Beach is the insurance man. Beach is the one that they don't have the case against. Nothing he said is evidence. Nothing that I say is evidence. But ask yourselves: Why did he dwell so

much on Richard Michael Beach? The witnesses couldn't.

I am going to conclude in a minute, and the one thing that I would ask that you do is to give Richard Michael Beach the benefit of your own individual thoughts. Each and every one of us has an opinion, and if any of you, any one of you has reasonable doubt, I ask that you stick to your guns. You maybe the only that is right.

I have done all I can. I am sure that in this short period of time there are some things that I would have liked to have commented upon but I can't, and if you are in the jury room and you feel that you want to bring up something about Mr. Beach, then please do. Don't be bound by what I say; it is your recollection that counts.

I am going to sit down in a minute, and when I do, as far as that case goes, my lips are sealed. You will hear no more from me. But before I sit down I want to leave you with one thought, and that is this: That the defendant is charged with serious crimes. This is his only day in court. It is the only time you will ever sit in judgment on him. The decision that you render will live with him and his family all the days of his life. You cannot come back tomorrow and say, "Mr. Beach, I am sorry; I

was wrong."

This is it, ladies and gentlemen of the jury. If you have reasonable doubt, and I suggest that you do, find him not guilty because he must be proven guilty beyond any reasonable doubt, and I am sure that Mr. Fisher will tell you that if you have a reasonable doubt, then acquit him because Mr. Fisher, as I, loves justice. He loves justice more than he loves a conviction.

I ask you and I implore you to find Mr. Beach not guilty. Thank you.

MR. PAPPAS: Ladies and gentlemen I am Andrew Pappas. I am down here near the end again, and you have heard from other counsels, and I am going to cut out a lot of what I have prepared because they have covered it and probably more thoroughly and better than I could if I had gone over it with them.

I would like, at this time, to remind you of my opening, and when I opened at the beginning I said to you that I thought that that was a local case, and not a Federal case, and I was speaking for my defendant, Raymond Czerwinski. I told you that I thought that the FBI might have been mistaken. Well, what did we hear, in the evidence, and I am going to discuss the evidence with you and I am going to

discuss it in two parts. The first part I am going to discuss the evidence that you heard, and the hard cold facts and the tapes and so forth, and lastly I am going to discuss the expert because his was a little different kind of evidence that we are used to.

He spoke in terms like "in my opinion," and "conceivably," and "consistent with," and it is a little different kind of evidence, and it needs different treatment and I don't think that the other attorneys have touched on it.

But let's look at what we have here. We have a lot of surveillance, most of it. We had a lot of tapes involved, and we had the FBI put a lot of time in this and naturally, they put in the time, and they were looking for a Federal case, and that is their job.

What did they charge Raymond Czerwinski with? In the first case they charged him, on charge one, and they said that between September of 1973, September 13th, I think, 1973, and June 26th, 1975 that he knowingly -- knowingly conspired with Colloca, Cook, and two unidentified conspirators, and the other five named defendants here. And what did they conspire to do? The Government said that they conspired with them to conduct, and I may forget one of these, but

finance, direct, manage, supervise and own an illegal gambling business, and in the second count they said that he and these other five defendants did, in fact, conduct, supervise, plan, own, finance such a business.

And then, as Mr. Fisher told you, what is this business? One, it violates State law on gambling. He told you that Ray took bets as a bookie. He had to prove so many bets, and Mr. Fisher discussed that with you, but more importantly, and this was brought up by the defense, you have to show that five or more people engaged in this.

Now, let's look at what the expert evidence showed with regard to my client.

Well, there were about four things that were mentioned. One was the tapes, and we will discuss those later because he examined them quite a bit. I told you that.

Two, there is some surveillance, and if you recall, Mr. Fisher went through that with you, and there is one surveillance on it. New Year's Eve, December 31st, Joey D'Agostino goes to Ray Czerwinski's house, and he is in there for two minutes. We don't even know whether Ray was home. Were they conspiring during that time? We don't know if they met. That

was the only time to his house.

What else was in the stipulation? Ray lives in that house, and he lists his apartment in the phone book and he lives at that house. That is the other thing that he stipulated to, and the other people who testified was James Keller who came in and told you what I told you from the beginning, that he bets with him -- with Ray. He learned his name here, and he called him "Baldy" and he has known him for years. He told us that.

What about the other witnesses? We have Mr. Colloca, and Monica Simms and neither one of them knew him. You can bet that if there was a connection Mr. Fisher would have had them up here and pointing and saying, "Do you know that man," just like he did with all of the other defendants. But they didn't know him.

The same with Mr. Cook and with Mr. Vigalanti, and all of the FBI agents. I wouldn't expect the ones in Las Vegas to know him, but maybe the ones here had something to say, but no, nothing.

So, what else do we have? Was he even tied in with any of the other defendants? Grezo, no. Camerano, no. Richard Michael Beach, no.

No question he is talking on the tapes

with Joey, and that name is mentioned in it.

So basically then what we have got is the evidence like James Keller who said he bet with him and we admitted that, and two, we have got some taped conversations.

But what you have to do is ask yourselves: What do these taped conversations show? One, I think that they show that Ray Czerwinski is a small time bookie. Jimmy Keller owes 15 or 16 or 17 hundred and he is out of business. He is calling up Joey and is saying, "I can't pay off my bettors."

And what does he say to him in several different conversations? Maybe that Sam can lend Keller the money. He doesn't care where it comes from or how. Lend it to Keller and let him pay me to pay off my bettors, or maybe I can borrow it and pay off my bettors. He is a small time bookie, and that is pretty much what he is.

Look at the tapes and the conversations with Joey, and they talk about Sam and there are three people there, and there is not five people. Look at them, and decide where did he knowingly conspire to conduct, supervise, direct, manage, own, and so forth, an illegal gambling business with five or more people and when, in fact, did he do any of

those things with relation to the five or more people?

But the Government's theory is that he is an employee, and I think that the theory was that all of the surveillance and everything involved, we have got a Federal case here. He is a Federal employee, and he gets a few other people tied in, and he will have five. And they dumped it in the lap of their expert, and they brought him in and said, "We have done all of this surveillance, and everything is just as we laid it out to you, and it is still confusing, and you straighten this out, Mr. Expert, and put five people in the right seats."

Well, he testified on direct, Mr. Fisher examined him and he talked about -- well, one thing that I think that the other attorneys mentioned, he didn't talk about Cook and Colloca. He didn't tie them in at all. His report is in evidence, and I think that that is the only reference it makes to either one of them. He said something about this individual is a line source, and they compare this and they discussed periodically with D'Agostino. The expert told you that that, in and of itself, what is that? A lot of bettors do that. It didn't call him in the report a member of the group, or the gang, as

Mr. Fisher would characterize him, or a supervisor who insulates bettors. That is not in the expert's records. He talks about Cook. He doesn't even think enough -- he even mentions Colloca in the record.

I say to you that if we are to find anything here we have to find it with the six defendants here. Colloca and Cook are red herrings.

Now, let's go on from there. What else did he discuss with you? He discusses Camerano. Well, that has been discussed by Mr. Rydelek. He said that he gave a line. But he told Mr. Fisher, he said that a line is necessary to the daily operations of the business.

Well, again, I didn't see daily calls in there, and I didn't hear them. You decide whether or not, beyond a reasonable doubt, that individual is a member of a business; one single business, or a group of five. Beach and Ebare he calls about, and their attorneys have been talking about this and I am not going to continue on it.

Mr. Grezo, well, Mr. Palmiere examined him at great length, and I heard a lot of statements to the effect of its being consistent with the bettor, and it is consistent with a bookmaker. It is

consistent with this and consistent with that. I, at least, developed some pretty strong doubts about that.

We had the situation with the middle, and we discussed that. Mr. Grazo is part of this five that they are claiming my client, Raymond Czerwinski, was mixed up with.

Now, he also talked about Mr. Czerwinski and he said that he was a writer. All right, let's go on from there. He mentioned some other people, and Mr. Fisher said, "Well, there are other people involved here," and he said Lefty, and 76, and B.B.60, and V.L. and I think another one or two.

All right, stopping there he started with a cross examination. What was the purpose of this Lefty and everything? To convince you that we have got a big organization. Not one or two or maybe three independent groups that are not involved in this big conspiracy. We want an organization and the expert will tell us about it. Keep that in mind because I am going to come back to it.

All right, he told Mr. Palmiere he didn't hear all of the tapes, and he read only the composite he told Mr. Palmiere. He admitted to Mr. Shanahan that his opinion could be wrong. He told Mr. Shanahan

his report was based on the transcript. He then told him, 'My conclusions are based on the composite, except for all of these bets that I totaled up and I analyzed the tapes for that."

And again, for the third time he told Mr. Shanahan, "My findings are from the composite tapes."

So I got up, relying upon this to question him, and I started asking him about number 76 because I was confused, and in the composite tapes I went over to Page 50 and Page 87, and you can look at them yourselves, and the only place that he appeared at the composite, I asked him what do we have? He agreed with me, there is nothing in there that shows anything about a bettor, and then he changed the rules and he said that there was something else he looked for on that. And when I got up on cross examination I was relying on what I heard and either he was wrong and he did not want to admit it, or he mislead us one of the two but I don't believe him. He is trying to do a job. He was up there a long time but the fact remains that this is just one thing that I mentioned about this but he was talking about the large group and there was nothing on the tape. When you examine that transcript, if you want

to look at it and you can tell me if you can find a Della, or Lefty, or V.L. they are not even on there. So again either he was wrong, or there is something that we weren't told. I wasn't told when I tried to question him.

Finally, I asked him a few questions about my client, because he said he was a writer, and I asked if he thought he was an employee or if he was just independent and if he had got to be a part of this whole group. And I said, "Well, could he be a bookmaker?" He said, "No", and yet in his report which is in evidence, he said Czerwinski is a bookmaker who obtains the line from D'Agostino and gives sport wagers to the operation.

All right, but he wouldn't admit that with me. Why? Is it that important? I don't know, but again, he said he is only a writer, and when I tried to ask him: Isn't this in your report, and he said, "Well, I got that from something else."

Again, it is inconsistent with what he told Mr. Shanahan three times.

I am going to ask you this: Consider that when you consider all of the evidence because it was as he admitted, it was opinion evidence, and opinion evidence at best; his opinion. Is it the kind

of evidence, is it the quality of evidence that is going to make you find beyond a reasonable doubt that Raymond Czerwinski knowingly conspired with all of these people when there is nothing else but opinion to tie him in with all of these other people, or that he was involved in an operation with all of these people when all of the evidence shows that he knew one or two? No, I don't think so. In fact, I think that when you retire to deliberate you are going to think about it with regard to Ray Czerwinski, that there must have been a lot of complicated proof, but with regard to Ray Czerwinski you are going to look at him and say he doesn't even belong in this group. He is just a small time bookie, and you are going to say with regard to Ray Czerwinski that this is a very simple case. He was never involved with four more other people. Thank you very much.

THE COURT: We will take a short recess.

(Whereupon the jury was excused.)

THE CLERK: The Court stands for a short recess.

(After a short recess the jury was returned to the jury box and the proceedings were continued.)

THE COURT: Mr. Shanahan.

MR. SHANAHAN: If the Court please, Mr. Fisher and ladies and gentlemen: I have good news and bad news. The good news is that I am the last, and the bad news is that it is going to take me just a few minutes to go through what I want to say to you.

Let me seriously, however, say at the outset that I feel remiss if I did not express it to you our appreciation for your attentiveness throughout this trial.

We have had some pretty warm days and the subject hasn't been exactly scintillating, and you certainly are to be congratulated for your ability to give us your attention throughout this long period of time.

I ask you to be patient for just a few minutes longer and the case then will be ready for the Court's charge and your deliberations.

Now, the purpose of the summation, I assume that you have gathered by this time, is to enable the attorneys to review the evidence in the case and to point out their arguments to the jury. My purpose here, of course, is to point out the arguments that I would like to have you consider because I feel that those arguments should be, at least, the reason for a verdict of not guilty here on behalf

BEST COPY AVAILABLE

of my client, Samuel Ebare.

Now, it is necessary for us to have a clear understanding of what that charge is. So far as Mr. Ebare is concerned, he is charged with the violation of Section 1955 of the United States Code, that is more commonly referred to as the Federal Gambling Statute. Secondly, he is charged with the crime of conspiracy, a separate crime, but a conspiracy that is alleged as a conspiracy to violate that same Federal Gambling Statute.

Now, as a result of the fact that my client is charged simply on those two counts of the Indictment, I want to restrict my remarks to the evidence that deals with those two counts alone.

Now, the Court, at the close of our arguments, of course will give to you a charge as to the law that you are to consider in arriving at your verdict and in deciding this case.

There are just a couple of rules of law that are pretty general that I would like to call to your attention at the outset, and not with any thought of invading the prerogative of the Court, but simply to make some of the remarks that I want to say to you perhaps a little more clear as we go along.

Now, the general rules that apply in the

trial of a criminal case, and of course you will appreciate that this is a trial of a criminal case, the general rules are that, first of all, that the indictment upon which the charge is based should not be considered by you people as jurors as even the slightest evidence of the guilt of any defendant upon this trial.

But on the other hand, it is your duty to start here and at this stage of the case consider or presume the defendants to be innocent of the very crime or crimes for which they are on trial.

Now, the Court will say to you, I believe, that the burden of proving the guilt of a defendant in a criminal case, and in this case, is imposed by a law upon the Government, and they have the obligation of proving evidence to you that is sufficiently believable and credible that will take you from the presumption of innocence from which you start over to the point where you are convinced beyond every reasonable doubt that the defendant is guilty.

Now, the purpose of proof in a criminal case, the Court will tell you, never shifts. It never becomes the obligation of a defendant to prove his innocence. The burden of proof in a criminal case remains with the Government throughout the entire

trial so that it would be your function in reviewing the evidence in this case to determine whether or not you are now, from what you have heard in the courtroom here, satisfied beyond a reasonable doubt that each of these defendants are guilty as they are charged to be.

Now, in deciding that, the Court will tell you that you are the sole and exclusive judges of the facts in the case. You are the sole and exclusive judges of the credibility of the witnesses. It is for you, and you alone to decide the weight that should be given to the testimony of any witness. It is you and you alone who will decide the ultimate question of the guilt or innocence of a defendant in a criminal trial.

Now, if, after you have heard all of the evidence in the case, if at this point you are not satisfied beyond a reasonable doubt that the Government has established their case, it is your duty under the law, and under your oath as jurors, to find verdicts of not guilty here, and that is what we are asking you to do.

Now, in order to understand this Federal Gambling Statute I think that it is necessary that we discuss for a few minutes the elements that the

Government is obligated to prove in order to sustain this charge, in order to be justified in asking you for verdicts of guilty in this case.

Now, there are several elements that go into making up a violation of the Federal Gambling charge that must be proved to your satisfaction, and that must proved to you beyond every reasonable doubt.

First of all, I think that the Court will tell you that the first element of the charge is the existence of an illegal gambling business and an illegal gambling business here is a business which is in violation of the law of the State of New York. So that the question so far as that element is concerned is was the bookmaking operation that was conceded, operated by Joseph D'Agostino, in violation of the laws of the State of New York.

Now from the definition that the Court will later give you as to what is legal and illegal so far as the New York State Law is concerned, I believe that you would be justified in saying and in deciding that the operation of Joseph D'Agostino in bookmaking was, in fact and in law, a violation of the laws of the State of New York.

Now, that determination, however, and I want to make this as clear to you as I can; that

determination does not mean that the bookmaking of Joseph D'Agostino, as you have heard it in this case, is in violation of the Federal Gambling Law. Or that you would be justified in rendering a verdict of guilty on the charge here for that reason or that reason alone.

And the reason that I say that to you, ladies and gentlemen, is that I want you to understand, and I am sure that the Court will tell you that that is only one of the elements that the prosecution has to prove in this case. That one element, again, that the bookmaking operation of D'Agostino is in violation of the laws of the State of New York, and I agreed that it was, but I warn you, as I just have, that coming to that conclusion would not justify you in rendering a verdict of guilty in this case. The reason for that is that there are other elements that have to be established by the prosecution that are just as important as that first element.

Now, the second element is that the bookmaker -- the bookmaking operation must involve five or more persons who conduct, finance, manage, supervise, direct and own all or a part of such business. Now, that involves some pretty serious questions for your determination under the evidence in

this case.

In connection with this element, it is necessary that you be satisfied beyond a reasonable doubt that five or more -- at least five persons participated in D'Agostino's operation, and they must participate as persons who conduct, finance, manage, supervise or own all or part of that business.

Now, you have heard, during the course of the trial, and you have heard in Mr. Fisher's summation this morning, the proposition that a bettor, a person who bets in any gambling operation, be it in bookmaking, as was operated by D'Agostino, be it in a dice game, be it in any other type of gambling, a bettor or a player does not violate either the statute or the Federal Law. And that's an important proposition for you to keep in mind in determining the position of the various six defendants who are on trial here before you.

Now, bookmaking, on the other hand, means advancing gambling activity by unlawfully accepting bets from the public as a business. And as I have indicated to you, it is my belief, looking at the evidence in this case, that D'Agostino's operation was a bookmaking operation and that it was, in fact, in violation of the statute.

Now, because bettors or players do not violate any law, Federal or State, as I have just indicated to you, again, it is necessary for you to be satisfied from the proof in this case and beyond a reasonable doubt, that the individuals involved here are not simply bettors, or players because the law requires a greater participation, that they own, manage, conduct, and so on, these other words that I have just mentioned to you. Their participation has to go to that extent.

Now, who comes within the classification of people who conduct, finance, manage, supervise, direct or own all or any part of the business? Who comes within the classification in th'- case? Well, I have to say to you that clearly D'Agostino does. He was operating the bookmaking operation. And I would h' e to believe that Czerwinski does, as well, because .. would appear that either Czerwinski was a bookmaker on his own, or he was an agent writing business or obtaining business for D'Agostino.

Now, it seems to me that the evidence has got to be fairly clear on that and I would think that you people would pretty nearly have to come to that conclusion as you reviewed the evidence here.

Now, as to the other defendants. Beach.

Grezo, Camarano and my client Ebare, there are serious questions for your determination, serious questions for you to pass upon here.

Now, so far as the various individual defendants are concerned, their attorneys, previous to what I am saying to you, have argued their positions that they are taking upon behalf of their clients, and I am certainly not going to go back and attempt to review with you the evidence as it applies to any other one, other than to my client, Ebare.

Now, we have just talked now or up to now about two of them. Go back again, so that I am sure that you have it, that it is an illegal gambling operation under the law of the State of New York and one element is that five or more people must conduct, finance, manage, supervise, direct or own a part of that operation. The second element and the third element is that that is a gambling operation and it has been in substantially continuous operation for a period in excess of 30 days, or has a gross revenue in excess of $2,000 on any one day.

Now, it is necessary, as I have indicated to you, that you be satisfied of the existence of all three of these elements beyond a reasonable doubt before you would have the right to find any defendant

guilty so far as a violation of the gambling law, itself, is concerned, and what we refer to as the substitutive count, which is Count II of the Indictment.

So that it means that if you are satisfied, if you do believe that the operation of D'Agostino, the bookmaking operation violates that New York State Law, and if you are satisfied further, beyond a reasonable doubt, that that operation was in business for 30 days or more, or that there was $2,000 worth of gambling business in any one day, if you are satisfied beyond a reasonable doubt as to those two elements, but if you have remaining in your mind a reasonable doubt as to whether five or more people were involved in the required manner, participating illegally in this D'Agostino bookmaking operation then, because they have failed to convince you of that one element, I say to you that under the law that the Court will give you, under your oaths as jurors, you are bound to render verdicts of not guilty here.

Now, so far as the conspiracy charges concerned, let me say this very briefly about that: Conspiracy, as the Court will tell you, is a separate crime. But what conspiracy is is an agreement or an association formed to violate here the Federal

Gambling Statute. So that they have charged, at least as far as my client is concerned, and all of the defendants, as a matter of fact, they are all charged that Counts I and II, there we have the charge of the direct violation of the Federal Gambling Statute and in addition to that, we have a charge that they conspired together for the purpose of doing that same thing.

Now, for the purpose of making my remarks a little more brief here, I am not going to discuss those separately because the same basic facts are pertinent to your decision and relevant to your decision on both of these charges, and because the Federal violation of the Federal Gambling Act is the important thing that we are confronted with here.

Now, let's consider from now on the testimony as it relates to my client, Samuel Ebare. First of all, before I get into a discussion of that, I want to call to your attention something that occurred here during Mr. Fisher's summation.

Mr. Fisher held on high an exhibit which was a stipulation that he told you that we had all agreed was the truth. Well, now, just for the purpose of correcting the record, we did not all agree that it was the truth. What this amounted to

was an effort to shorten the testimony in this trial, and to eliminate the necessity of calling a half a dozen more FBI men. And what we agreed to is exactly what this says that if a number of FBI agents were called they would have testified to having made the following physical observations, and then follows after that certain things that we were willing to agree, if they took the witness stand, that they would testify to.

But we haven't agreed, at any time, and I am sure that I am speaking for my colleagues in connection with this, we have not agreed at any time that should be accepted as gospel, and simply because some FBI agent would have testified to it if he had come here.

Now, with that understanding that we haven't agreed that this was true, we have simply agreed to a short cut and that is all it amounts to.

Let's talk here for a minute about Mr. Colloca, and I want to discuss with you the people who appeared here in court, and who gave live testimony on the subject of the issues in this case.

Now, Mr. Colloca, you will recall, has been mentioned by others in their summations. This gentleman from Oswego is engaged in the dry cleaning

business up there, and who came here and testified under apparently what is an actual disability, some heart condition. Now, Mr. Colloca apparently had at some point or other, has been convicted in State Court up in Oswego in connection with a charge of promoting gambling. So that it would appear that at some time or other in his career he has been engaged in the business, himself, as a bookmaker.

He testified before the Grand Jury in this case, and of course he testified here on the trial and in each instance that he testified, according to his admissions on cross examination, he asked for and received immunity, which means that he asked for protection in order that he, himself, would not be charged with some criminal act, or acts as a result of the testimony that he gave.

Now, of course, whenever anyone testifies under a request for immunity which has been favorably acted upon it is certainly fair to ask yourselves, in weighing his credibility, in weighing how much you can rely upon his testimony, to ask yourselves at least why does he want immunity? What does he want it for, and why would he refuse to testify without immunity? Now, what it means is that a person has the right to refuse to testify to anything that would implicate

them.

Colloca had a right to refuse to testify to anything that would implicate him, and what he has done is ask for immunity, and as a result of that having been granted, now, he is obligated to testify. But further than that, he is protected, and you have got to figure that a fellow like Colloca is looking for that protection, and that he has got some reason why he wants it.

Now, did that reason have anything to do with Ebare or D'Agostino, any of these defendants on trial here? I suggest to you that it did not that it had nothing to do with them, nothing to do at all and I will try and demonstrate to you, if I can, why I think that you would be justified in adopting my view in that respect.

Now, Colloca tells us that he knew Ebare, that Ebare on one occasion, and apparently -- I don't know that he fixed any time for it, but he said that it may have been in late 1973 or early 1974 that he had had some discussions with Ebare about Ebare purchasing a bicycle shop, up in the area of Oswego, and that Colloca, himself, went out and saw some people and talked to somebody who owned some property where a bicycle shop had, at one time, been

located, and made some effort apparently to acquire for Ebare that type of a business. And he says that at some point, and I gather that about that time but I am not really sure of that, myself, he says that if Ebare -- that Ebare said to him if he wanted some action, that he knew where he could get it, and that thereafter Ebare introduced D'Agostino to Colloca.

Now, Colloca tells us whenever he was a bookmaker, he says that he wasn't a bookmaker in connection with this operation. He says so far as the period of time that we are interested in that he was betting, himself, and he was putting in those bets by calling Joe D'Agostino on the telephone at some telephone number in Syracuse, and he was placing other bets with D'Agostino and certainly, if we are going to accept his testimony as truth, we are going to accept his sworn testimony as he gave on the witness stand, we have got to assume in connection with those bets that Colloca was nothing more than a bettor, and that in placing those bets he violated no law, Federal or State. That is what he told us, and that is what the Government has vouched for, when the Government called him as a witness and puts him on the witness stand as part of their case.

Now, he goes a little bit further. He

says he has got some friends who like to bet, and he would indicate to us that they didn't know where they were going to bet. It is like the fellow walking around with some word from the Lord that Notre Dame was going to win a particular football game and he wants to bet on it but he doesn't know where to bet and it is sort of a frustrating thing, and so what Colloca tells us is that he had some friends sort of like, and so that these friends, to accommodate them and without any thought of making any money on his friends, he would call in their bets along with his own.

Now, if what he is saying is true, if you accept it, it doesn't seem to me that that was a bookmaking operation. It is for you to decide. But a bookmaking operation or no, all he was doing was calling in bets.

Now, was it a lay off? If he says he wasn't a bookmaker, if he wasn't operating a bookmaking business, it was no lay off of bets because he tells us he wasn't accepting any at this point and he couldn't lay it off if he wasn't accepting it.

Now, there is some odd thing about this. He tells us that on October 22nd that he was with Sam Ebare in the Chartroom, which is a restaurant and

bar up in the City of Oswego, and they were sitting at the bar, and that Colloca tells us that he owed some money at that time, as a result of bets.

Well, he never placed a bet with Ebare, so presumably at this point he owed the money to D'Agostino, and he says that he and Ebare talked about it, and then he tells us that on another occasion, on October 22nd, about a week before that he was at the Pink Pussycat, a restaurant in Syracuse, a bar and restaurant outside of Syracuse, New York, north Syracuse, I think, and that he and D'Agostino had a talk in the banquet room, and after they got through talking they went out and Ebare was sitting at the bar and they stopped and visited with him a few minutes and walked out.

Now, the thing that I would like to call to your attention: That it sounded as though Colloca was in some sort of a glass house, and that the only contact he had with anybody was with D'Agostino, and possibly Ebare. But when I started asking him about betting the books in Oswego, then he didn't want to say anything about that. He wanted to know if he had to answer that, and he was told he did have to answer it and he mentioned one name, Spano, and said that as far as other people were concerned

he didn't know anything about them at all.

So it makes you wonder if this immunity that he sought wasn't for the purpose of protecting some entirely different gambling operation than the one that you have heard about, and one I suggest to you might be located up in the Oswego area.

Now, with what you heard from Colloca, and weighing his credibility in the balance, does that testimony convince you beyond a reasonable doubt that Ebare was the owner of D'Agostino's operation? Does it exclude every other possibility beyond a reasonable doubt; but that Ebare was the owner? How do we jump to that conclusion? How could we?

Now, James Keller, Keller the young man, that used car dealer who tells us that at the end of the football season in early 1975 that as a result of bets that he placed with D'Agostino, he had lost some $1,600. He was engaged in a seasonable business, and his business was going to pick up in the spring and summer, and he could better afford to pay the $1,600 that he lost in the summer, than he could in the months of December or January, which sounds reasonable.

Now, he said in his testimony here, when you saw him on the witness stand, that they wanted to talk to Ebare and he told us that sometime in January

he did talk to Ebare, that Ebare stopped over at his garage, his used car lot, or whatever you would properly call it, and that there was a discussion and that discussion consisted of this: Keller told Ebare that he placed some bets with Czerwinski, and that he had lost those bets and he would like to pay over a period of time. And what was Ebare's answer to that? Ebare says, "Why call me? Take it up with Baldy, the fellow that you bet with." And there is not one iota of the testimony, ladies and gentlemen, in this whole trial that, as a result of that talk between Keller and Ebare, that anything at all happened. Keller didn't say, "Ebare gave me time to pay it." He didn't say, "Ebare refused to give me time to pay it." He didn't say anything at all.

So they want you now to jump from the conclusion that because Keller wanted to talk to Ebare, Ebare is necessarily guilty.

Now, is he? Is he?

Now, the transcripts. I would like to, and I am not going to read these to you so you don't have to be concerned about that, but let me call them briefly to your attention. There is a conversation on January the second of 1975 between D'Agostino and Czerwinski.

Now, ladies and gentlemen, you want to remember that these conversations were serendipitiously wiretapped by the FBI, and that these people who were talking on these telephone were completely unaware of the fact that these telephones were tapped. They didn't know. And I want you to bear that in mind because you might have the idea: Well, they are pretty careful of what they say. There is no reason for them to be careful of what they are saying because they weren't aware of the fact that what they were saying was being taped.

Now, Czerwinski and D'Agostino are talking about that, and he said, "But I got trouble now." And D'Agostino said, "What?"

He said, "I got trouble with this kid I told you." He says, "I don't know what the hell he wants to see Sam for." D'Agostino says, "Yes, he ain't going to talk to him."

Czerwinski says, "Yeah, but I'm stuck, Joe. I don't know what the hell to do. The kid owes $600, sixteen hundred bucks."

D'Agostino says, "That's how much he owes?"

Czerwinski says, "Yep. I told his brother, thousand, but I just figured it out. He

owns a used car lot deal. He said he knows Sam. He says he wants to see Sam. I said hey, you owe it to me, yeah, you don't owe the guy nothing. Well, I got to see him. I got to straighten it out with him."

And then Czerwinski ends that phase of the conversation with this, and I think that this is pretty significant:

"Czerwinski: So I don't know what the hell I'm gonna do now, because I got to pay off these other guys."

Now, here is this big bookmaking operation that they are talking about, and unless they collect the money from Keller they haven't got enough to pay the winner. This is a big operation, isn't it?

Right on the tape. Then D'Agostino says what is the guy's name, and Czerwinski says, "Jimmy Keller. I think he said he knows you, too. Keller, he got a used car lot on Spencer Street."

Farther down Czerwinski is still talking about the same thing.

"Joe, I don't know, believe me, this is, this well, I don't even, well, I don't well actually what he wants to do is see Sam, if he can pay Sam so much a week or something, you know. I don't know. See that's why he wants to talk to Sammy. Well,

according to him he says he knows Sam good. Now I don't know. I don't know if Sam knows him or not."

And then Czerwinski follows that up by saying, "But according to that Sam would have to give me one six zero zero."

Well, now, that is a strange remark. If these people are working for Ebare, why would Sam Ebare have to give Czerwinski sixteen hundred, and what this thing works around to, if we follow it long enough is Czerwinski is thinking that he can borrow sixteen hundred from Sam in order to pay off other bettors who are entitled to their winnings.

C rwinski says, "I know. That's what I told him. I says, hey, I said, Christ the guy ain't gonna give me no sixteen hundred dollars to pay off the debts. I said what the hell."

Another conversation that took place January 6th, four days later, and they are talking about this situation again and Czerwinski says, "I went down to see him today," and apparently they are talking about Keller. "I asked him for his money. I want to see him, he says, I got."

D'Agostino says, "And he wouldn't give you none at all?"

And Czerwinski says. "No. He said he

wanted, wanted to make a deal with him, you know what I mean?"

And D'Agostino says, "Yeah, he wants to pay a little at a time."

And Czerwinski says, "Yeah, that's it."

Then Czerwinski says, "What I'm gonna have to do is borrow seventeen off of him."

Now, ladies and gentlemen, isn't it conceivable that Ebare is the owner of this business that is being conducted by D'Agostino and Czerwinski and that this means that the people running the business for Ebare are going to borrow seventeen hundred from Ebare? Does that even make sense to you?

What it does show is, I think, it shows affirmatively that Ebare was not the owner or operator or the financial backer of that business because why else would they talk about borrowing money from him? If they talked about borrowing from the First Trust and Deposit Company you would think that that would be an indication that the bank was the owner of the business? You would think just the opposite wouldn't you, and that is what I am urging upon you here.

Now, Sam Visconti, I noticed that

Mr. Fisher made no mention of Visconti and I think I know why. Just as it developed here, the only dealings that Visconti had with Sam Ebare was back in 1972, which was before the Indictment period in this case.

The Indictment period, the time that we are concerned with here, is from sometime in 1973, late 1973 until June, I think it is, of 1975. And the connection between this Visconti and Ebare was something that took place, according to Visconti's testimony three years before he testified before the Grand Jury. He testified before the Grand Jury in 1975, three years before, and that takes it to 1972, and he testified that for three years before his Grand Jury testimony that he had been betting over the telephone with Joey D'Agostino and he was paid by D'Agostino when he won, and he paid D'Agostino when he lost.

That is the testimony so far as it goes concerning Ebare, from Visconti.

Now, then, in their effort, and in their frenzied effort, I would suggest to you, to try and tie Ebare into this case, on summation they bring up some things that we have heard very little about during the course of the trial here. First of all, they talk to us about this small container of rubbish

that Esposito found at the James Crest Apartments.

Now, entirely apart from the fact, ladies and gentlemen, that that stuff, at the best, is not tied in in any fashion to Ebare, entirely apart from that, there is no proof that Ebare was in anyway responsible for it, that he ever had it to start with. Just look with a critical eye at this testimony because they are asking you to predicate a verdict of guilty upon testimony such as this.

They say that Ebare rented that apartment from December 24th, that he paid a month's rent on it, which entitled him to use it for a month to January 24th. Nobody says he was there until January 24th. There is no proof on that subject at all. But January 29th, some four or five days after the term expires, Esposito goes in and checks over what he finds in the wastebasket, or wherever he found it, and with another FBI agent standing out in the hall waiting for him to get it together and they sort, and when they get all through with it, they get some junk, and a bunch of rubbish.

Now, I don't mind that. The testimony shows that that is all it was. But we come up to today and what does he tell us it was? He tells us now that they were codes and numbers, codes and

numbers on what? They had a gambling expert on the witness stand from the FBI in Washington, and he didn't look at this stuff and say to us, "These are codes. These are code numbers used in gambling."

We get right out of the blue, out of Mr. Fisher's imagination when he sums up to you here this morning.

And then they talk about the execution of a search warrant which was January the twentieth, 1975, and that there were found some discarded, outdated schedules in the back of an automobile with no writing on them at all, completely blank, and completely it seems to me insignificant, and now what do we hear? Those are code numbers.

Now, let's be reasonable about this. Why would the Government be reaching, why would they be reaching for testimony such as this? Doesn't it indicate, as one of the counsel said earlier, that that is the best they got? That is all they got, and it is very little at the most.

Another thing of great significance: Ebare was searched, and he has got $1,359 in his pocket. I like Mr. Fisher's description of small bills, hundreds and fifties and twenties and tens and it sounded pretty big to me, but if they want them as

smaller, they are small and I don't care.

But what is the significance of it? If some FBI agent comes up and stops you and searches your pocketbook or your pocket, the fact that you might have a pretty good sum of money, is that proof that you are guilty of some crime?

Ladies and gentlemen, the Court is going to say to you that people should not be convicted on the theory of association, they should not be convicted on the theory of suspicion, and that you people as jurors have the right to ask and receive proof that is understandable, proof that is convincing, and I say that they don't have it here.

Now, Monica Sims testified that she permitted D'Agostino to use her telephone in her apartment for a period of time. Cook said that he permitted it. D'Agostino did use his telephone for a period of time. Didn't it seem a little significant to you that neither of those two people mentioned Ebare during their testimony? They weren't -- the arrangements weren't made by Ebare, they never saw Ebare at this place, they never received any money from Ebare, and they apparently didn't even know Ebare. Isn't that of some significance here?

Now, the Government talks about that

being some sort of evidence of insulation. Ins lation my hat! What he is talking about is a complete lack of proof and he is trying to cover it up by characterizing it as insulation.

Now, there is a telephone conversation that counsel referred to on December 23rd that he says relates to Cook. The conversation starts off that somebody by the name of Uncle Al, they want to see. And D'Agostino says, "I have to see Al at the other Johnnie's at four o'clock, and Ebare says who, and D'Agostino says Al Clyde." Now, in some strange way, in some strange way Al Clyde is supposed to be Leon Cook.

So Mr. Fisher says, "All right, let's take a look at the surveillance report and see what these fellows do on that day."

Well now, you have to understand that if one of these defendants stopped and patted a dog on the head, the FBI isn't going to say he stopped and patted a dog. What they are looking for is something incriminating. So what do they get? Fisher says that what they got was later that day Ebare, D'Agostino and Cook met at Howard Johnson. Now, that is supposed to be pretty significant. But the trouble with it is that when you look at that this is what it reads, and

we simply agreed that some FBI agent came in and if he testified to it that this is what he would say, "On December 23rd, 1974, same date, Sam Ebare, Mike Beach observed entering Ebare's Cadillac in front of the Sting," and that is a restaurant.

That was at 1114 Lodi Street, Syracuse, and at 2 p.m. or at 2:35 D'Agostino was observed with Sam Ebare and two unidentified males at the Eastwood Sports Center. The Eastwood Sports Center is a different restaurant in a different section of town.

Now, the important thing is that at 3:47 p.m. D'Agostino met Leon Cook at Howard Johnson's Restaurant in Syracuse.

But when Mr. Fisher told us about it as part of his summation he says that Ebare, D'Agostino and Cook meet, and that is not so.

Now, then they talk about a conversation on January the sixth, when D'Agostino, who clearly knows Ebare, and Ebare knows him, when D'Agostino calls Ebare, and remember this, ladies and gentlemen, when you are considering these wiretaps, where these bets were accepted, there is not a single telephone conversation in which Ebare participates; not a one, over a period of a month and a half; not a single one. Where they pick up Ebare's voice is where he was

then living at a completely different telephone number. But I think that it is important for you to know that when they had Ebare on the phone it is not from the location where this gambling is being conducted.

Now, to go back to that conversation of January the sixth. D'Agostino tells Ebare that somebody has got $612 coming and there is some discussion about that.

Now, remember, ladies and gentlemen, as the FBI monitors these tapes, they know coincidentally with the conversation, what the conversation is.

Now, they apparently are urging upon us that at that time, that D'Agostino or somebody was going out, and paying someone $612. Now, that would be kind of important, wouldn't it, it would be doubly important if Ebare was going to be it. And that is the whole point, of course, of what they are offering.

So you will remember Friday afternoon I read into evidence an excerpt from these surveillance reports and this expert and it was this, and this is January the sixth, that the telephone call between D'Agostino and Ebare happened at 12 o'clock noon, January the sixth, and now the FBI are surveilling these people.

At 12:43, a quarter of one, substantially

D'Agostino's vehicle is observed parked in front of the Eastwood Sports Center on James Street.

Then, at 2:19 Ebare and Beach enter the Sports Center, and at approximately 2:35 they and D'Agostino leave the Sports Center. So they are there a little over a half an hour.

During the period of time that they are all in there they are sitting at a table, the three of them, next to a window, apparently eating, after Ebare and Beach come in.

Now, when they leave the Sports Center, now this would be an important part for the FBI to develop or to come up with some evidence about, if Ebare is going to pay somebody off, a gambling debt that was accepted by D'Agostino. After leaving the Sports Center Ebare and Beach proceed to James Crest Apartment, 1072 James Street, where they remain until 3:58 p.m., when they drive to the Easterly Insurance Company office at 829 North Salina Street. They entered this office at 4:03 and departed there at 4:11 and surveillance was discontinued.

Now, there is nothing in that telephone conversation, number one, that indicates that it is a bet. They ask you to assume that. They ask you to base inferences on inferences here in an effort to try

to connect Ebare with this operation.

But when it comes right down to surveillance, the only thing that was done that day was for Ebare and Beach to go to an insurance company office in the City of Syracuse, Easterly Insurance Company office on North Salina Street. They ask you to assume that it is gambling business, and when we see the result of it, it is very apparently not gambling business at all.

Now, with reference to Mr. Holmes, just let me finish what I have to say with reference to him. Mr. Holmes is an FBI man. This case was investigated, and the surveillance was conducted, and the wiretaps were conducted by FBI men.

Now, it was ruled to be a proper subject for your consideration. The testimony of Mr. Holmes, and the Court received that testimony. It is evidence in the case, and of course you had the right to consider it. But if we are going to get some impartial evidence about gambling, you would hardly expect that the FBI would bring another FBI man here to tell us about it. It is sort of like having the hawks guard the chicken house. You don't expect him to come in and say, "No, these fellows, Mr. Fisher, that you have named as defendants here, no, they don't

have anything to do with this. You have got the wrong fellows."

Would you, for a minute, expect anything like that? I don't think that you would.

Now, what does Mr. Holmes tell us? He tells us that he reviewed these selected transcripts, and these transcripts, ladies and gentlemen, are selected out of probably five times that many that they have culled out of what you have in those pages before you. This is their best shot. There certainly isn't anything that is anywhere as good, in what you don't have. This is their best tapes, without any question.

Now, what Mr. Holmes tells us is that whatever opinions he formed and expressed to you, he based upon those opinions on reading those, and he based it on that alone. And when he gets all through, he gives you his opinion.

Now, the Court will tell you that you are free to accept his opinion, or you are free to reject it. That isn't like sworn testimony where he says that he saw this or saw that but he gives an opinion, and he is giving an opinion on this very question that you people are asked to decide.

I ask to you, give this case your own opinion; base it on the evidence here because I urge

you, with all of the sincerity that I command, that I just don't believe that they have established the guilt of Ebare as a participant in this gambling operation. Make up your own mind.

Thank you for your patience.

THE COURT: We will adjourn now until tomorrow morning until ten o'clock. Keep an open mind, and wait until you have heard the reply of the Government in the morning, and the charge of the Court.

Don't talk about the case and don't let anybody talk about it with you. Good night.

(Whereupon the jury was excused.)

THE CLERK: Court stands in recess until tomorrow morning at 10 a.m.

(Whereupon the proceedings were adjourned until the following morning at 10 a.m.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA, Plaintiff, - against - SAMUEL L. EBARE, also known as "Sam"; JOSEPH T. D'AGOSTINO, also known as "Joey"; RICHARD MICHAEL BEACH, also known as "Harpo"; CHARLES P. BIEZO, also known as "Sonny"; LOUIS M. CAMERANO; and RAYMOND CZERWINSKI, also known as "Baldy", Defendants.	75-CR-86

CONTINUATION OF PROCEEDINGS in the above-entitled matter came on before the United States District Court, Northern District of New York, Auburn, New York, on June 29, 1976, before The Honorable Lloyd F. MacMahon, United States District Judge, sitting by designation.

Rebuttal Summation By the Government. 870

APPEARANCES:

JEFFREY FISHER, United States Department of Justice, Washington, D. C.

-and-

PAUL R. SHANAHAN, ESQ., Onondaga County Savings Bank Building, Syracuse, New York. Attorney for Samuel L. Ebare.

-and-

JOHN R. RINALDI, ESQ., University Building, Syracuse, New York. Attorney for Joseph D'Agostino.

-and-

DAVID B. WEINSTEIN, ESQ., Metcalf Building, Auburn, New York. Attorney for Richard Michael Beach.

-and-

NORMAN A. PALMIERE, ESQ., Suite 700, One East Main Street, Rochester, New York. Attorney for Charles P. Grezo.

-and-

JOSEPH A. RYDELEK, ESQ., Setz Building, Syracuse, New York. Attorney for Louis M. Camerano.

-and-

C. ANDREW PAPPAS, ESQ., Gradley Building, Syracuse, New York. Attorney for Raymond Czerwinski.

THE COURT: Mr. Fisher you may proceed.

(Whereupon the following took place before the Court and the jury.)

MR. FISHER: May it please the Court and good morning, ladies and gentlemen of the jury.

I am not going to review all of the evidence again with you. I am going to spare you that. But I do feel an urgent need to respond to a few of the irrational and confusing arguments that the defense counsel had put forward yesterday in their summations.

The way the defense counsel argued some of their points in this case reminded me of the story of the octopus, and when he gets cornered he spouts out this black, inky substance and it confuses everything in sight, and in the confusion the octopus escapes. That is what I submit has been here.

The Government has stuck to the evidence. The Government has reviewed all of the evidence and the easiest thing in the world for you to do is retire to the jury room and go off on a tangent on one of these confusing side issues, that does not have anything to do with the case.

Let me illustrate, if I may. Number one, defense counsel told you that Mr. Cook, Leon Cook and

Mr. Colloca were not agents of this business, were not people to be counted among one of the five, were not conductors because they just took a few bets from friends, and placed a few bets themselves, and it was casual.

Ladies and gentlemen, it does not matter who they took bets from. It does not matter if they took bets from King Kong. The question is what did they do with those bets and the monies? They passed them on to the D'Agostino and Ebare bookmaking organization. And then what happened? Then they settled up regularly with their own bettors, on a regular basis, and then after they settled with their bettors, they took the settling, and they settled up with Joey, or with Mike Beach in the case of Mr. Colloca. In other words, they had their insulation factor and then, they had responsibility in the organization. That is the point. They had responsibility, and that makes them major organizers and conductors, or it makes them something more than just a casual bystander.

Another issue that is phony; they told you that Colloca is not telling the truth, and that Mr. Colloca was somehow mistaken about what he said. Ladies and gentlemen, you are the judges of the

demeanor of the witnesses. You have to remember Colloca. I believe that he was the second witness, the other older man from Oswego, and you have to ask yourselves: What was he like? Was he glib, and was he just overflowing with any kind of information that anybody would want to ask about? Was he willing to tell you whatever you wanted to know?

No, ladies and gentlemen you will remember, he was reluctant, he was reserved, he was nervous and perhaps you might even say he was fearful. It took a lot of courage to get up there on the stand in front of an open courtroom, and in front of the public, and in front of Sam Ebare and Mike Beach and tell everybody what his relationship was with them. It is submitted that he is not lying. He is not making up the story. If anything, he was minimizing it. If anything, he was holding back.

Now, Mr. Shanahan says he was lying because he was granted immunity. Ladies and gentlemen, he was testifying under oath. He was testifying under penalty of perjury. Yes, he was granted immunity, but he, on the stand, admitted his prior conviction, and up in the State Court in another matter and he confessed his own participation in the Ebare gambling business, and he admitted his own involvement and it

is submitted that he is an older man, he had a heart condition, and he was a lower echelon agent and the decision was made, yes, not to prosecute him for what he said, in return for his truthful testimony about what his involvement was with the other people. And I stand by that decision.

The next phony issue was Jimmy Keller. Mr. Shanahan says that he picks out a few conversations of Czerwinski and D'Agostino, and he says that all of those conversations mean is that Sam Ebare was going to be a bank, and he was going to loan money to Czerwinski, and Keller went to Sam to pay off the debt, to excuse the debt.

Ladies and gentlemen, what Mr. Shahahan did not add was that the other -- well, first of all, I admit that that as far as he went it is true. The characte istic of this bookmaking organization that people like Czerwinski and Colloca and Cook settled up their own accounts. They were responsible for their own accounts. They were the agent, and they talkad to the bettors. But it went further than that, because when they discussed Jimmy Keller, and Sam, why was Joey D'Agostino so upset? Why didn't he want him to see Sam? Why was he willing to make up any story to keep Keller away from Sam? Why did he go as

far as to suggest a punch in the mouth, rather than have a bettor see a man as high as Sam? And when Keller did see Sam, why was Sam upset, and why did Sam say if I had lost I would pay you. You lost, why can't you pay me.

And why did Sam finally give the okay? He finally said to see Baldy on a time basis. This is something not involved? This is something that just a bystander just loans money to Baldy? No, this is a classical example of going from the very bottom to the very top of the organization.

The next phony issue, Mr. Rydelek, representing Mr. Camerano, Mr. Rydelek is the only attorney who is, by the way, contesting the identification of his client's voice in these transcripts. He says that the Government's case against Camerano rests only on the agent testimony about the voice identification. That is Agent Scovue's testimony that he interviewed Mr. Camerano, and then he listened to the tapes, and compared them and they were the same. That is confusing. It is not the only part of the Government's case identifying Camerano. In fact, it is a very small part. We have much more in identifying Camarano, and much earlier. We have three days in a row when three separate FBI agents visually saw

Camerano at a Las Vegas hotel distributing line information, and then those three agents independently came into Court and identified him and said that that is the same man.

The voice identification on the tapes came later. But we knew that at that point, because they had seen him in the hotel, and we knew he was talking to D'Agostino because each of those three calls concerning the line, each one arranges the subsequent call and in the second one, the only on January 5, we have Camerano at one end over heard giving the line, and Joey D'Agostino received the line, and we have the telephone record going from one telephone to the other telephone. This link is inescapable that it was Camerano. There can be no doubt of that fact.

Mr. Rydelek goes on to accuse Agent Suban of trying to deceive you because of the inversion of numbers in his original notes. I asked him to bring his original notes into the Court and I had no objection that they come into evidence, and yet I admit that the numbers were inverted in the first call. Why would he bring his original index card with penciled in notes exactly as they were, if he was trying to deceive you? Wouldn't everything be

exactly alike all of the way along if he was trying to deceive you? No, Mr. Rydelek is trying to deceive you, and get your minds off the issues, and trying to get your minds off his client, and get your minds off anything and everything except Mr. Camerano.

He also talks about how Mr. Camerano's involvement is very slight. Well, Mr. Camerano may have joined the conspiracy late, and joined it on January 4th, but as you know from these tapes, he played an important part. He provided the necessary line information. A person can join a conspiracy late. He is just as much a conspirator if he joins it late. He is not a casual bystander.

We have him on four telephone calls recorded, and on the fourth, and on the sixth he was overheard. We have him on six calls.

Next, Mr. Grezo. Mr. Palmiere was for Mr. Grezo. He says that he showed in the evidence that on a few particular occasions, and I don't remember how many there were, and maybe as many as half a dozen, Mr. Grezo did try to play the middle. He did try and get the lines and play the middle. I don't question that. But, the expert testimony, he testified on redirect that while, sure a bettor can play the middle, a bookmaker can play the middle, too.

Anybody can play the middle who has access to two lines. And a bookmaker who has lay up, and is taking action from his customers, and they want to lay off and try and play the middle, and make that extra, or take that extra opportunity to make a lot of money.

So, the fact that playing the middle is not the issue. It is the confusing issue. It is the one that is inserted here to get your mind off the issue. The issue is did Mr. Grezo have customers? Whose money was Grezo betting? His own personal funds, or was he betting the money of his customers, and it was lay off action?

No, it doesn't take an expert -- well, the expert testified that, based on Grezo's conversations, he believed that he was higher than a bettor. He was at least a writer or a bookmaker. But it doesn't take an expert to see that. When Mr. Grezo said right on the tape that I am jammed, and Mr. Grezo says that I have got some advice for you, and when Mr. Grezo says, I am getting it all on Notre Dame and he is getting the heat, and the heat. And then he says that I got to get busy now, and he said he needed help on two games. I gave them to you already, and I need some more. I got to take it off, as the expert said, and taking it off his board, or his

charts, and not accepting any more action.

When Grezo says those things, the plain English of it is quite clear. He is a bookmaker. He has got customers. And the action that he is betting is lay off action. That is rebetted action to balance his books.

Now, Mr. Palmiere also gave you an explanation of the law of what a conductor is. I disagree with that explanation, but I am not going to go into it here because Judge MacMahon is the sole judge of the law, and I ask you to listen carefully to His Honor's instruction, on what a conductor is, and what a bookmaker is, and what a bettor is, and so on, and disregard any attorney's explanation of what the law is.

Now, the Defendant Beach. Mr. Weinstein says that the expert testified that Beach was a trusted friend. Well, I don't know if he used those exact words, but he said a lot more than that. He certainly said he was trusted, and he said that Beach would not be entitled to the information about the bottom figures, but the total action for the day of the whole business, or about one particular bettor's figures, and that was R. K.'s figures, and a person would not be entitled to that information only if he

had involvement in the organization and had a need to know, and that makes sense. That information is simply not available to the general public; it is not available to drinking buddies. It is available to people who have a need to know, people who have a role in the organization who have to distribute the information to others, or have to go and collect, or whatever they have to do. They have to report to their supervisors, and that is the only reason that you would get that information.

And Mr. Weinstein says to you, yes, he would get that information even though he is just a drinking buddy. Where in the evidence is there any support for that? You have to decide this case on the evidence. Mr. Weinstein says, yes, he would be entitled to that information even though he was a drinking buddy, but Mr. Weinstein is not a witness in this case, and he has not testified.

It is the evidence that counts, and the expert says, based on over 200 gambling investigations, that people do not get title to this information unless they are trusted, high level people in the organization who have a need to know.

Another phony issue: Mr. Shanahan picked up one conversation of the Defendant Ebare and

said that you can draw this inference, and you can draw that inference, and therefore my client is not guilty. He did not go through all of the series of conversations in the end, which I went through in my summation and he did not mention to you and tell you or remind you that Ebare mentioned to D'Agostino to see Baldy. He did not discuss the sequence of the conversations. He just took one out of the context and said that proves my client is not guilty.

Well, ladies and gentlemen, I ask you to look at all of the evidence. I ask you to look at the sequence. I ask you to look at everything in context, and in addition, the evidence of Mr. Kaller and Mr. Colloca. I ask you to put it all together. No, this is not a one-witness situation, and Sam Ebare did not get on the phone to Joey everyday, and say I am Sam Ebare, the owner of the business, and what is the status, Mr. D'Agostino. They do not do that kind of thing in a conspiracy, and especially sophisticated bookmakers. They do not do it.

But as submitted, we have enough evidence if you put it all together and you use your common sense, that we have established the case.

Now, in conclusion, this is a very important case, very important to the Government, and

very important for the people of the community. Please don't make the mistake and please don't be deceived. Don't be confused. Don't go back and, in a cloud of confusion, be diverted from the truth and just say, "Well, I am confused and we will find them not guilty."

Follow the Judge's instructions and listen carefully. Use your knowledge of the evidence and use your plain common sense to put it together.

It is submitted that when you do, you will return a verdict of guilty.

Thank you very much.

THE COURT: Ladies and gentlemen of the Jury: It now becomes my function at this stage of the trial to instruct you on the law that governs your decision in this case. Throughout their closing arguments, all of the lawyers, here and there, instructed you on the law. When they did that, they were out of their provinces. I am the exclusive judge of the law. I permitted them to tell you something about the law because in this kind of a case it is almost impossible to discuss the evidence without relating it to the legal issues involved.

But you must bear in mind that if what they said about the law differs from what I say about

it, you must reject what they said and apply the law as I give it to you.

Now, just as I am the exclusive judge of the law, you and you alone are the exclusive judges of the facts. You and you alone decide what witnesses you will believe, and you and you alone decide how much of a witness's testimony you will believe and how much of it you may wish to reject. You and you alone decide what weight, what value, what conclusions, what inferences you draw from the evidence and, of course, ultimately you decide the guilt or innocence of each defendant on each count in this indictment.

Now, you are not to conclude from any rulings that I have made throughout this trial, or any questions that I may have asked, that I have any opinion one way or the other as to whether any defendant is guilty or not guilty of any of the charges made against him in this indictment. That decision, as I have told you earlier, is exclusively up to you.

Now, how do you go about finding the facts? Finding the facts is merely a process by which you, the jury, consider the exhibits which have been received in evidence. Consider the testimony of all of the witnesses, both on direct and on cross-examination. Sift out what you believe, weigh it in the scale

of your reasoning powers and common sense, and draw such conclusions as your good, everyday common sense tells you that the evidence supports and justifies and decide just where the truth lies in this case.

Now, in this connection all evidence is of two general types; direct evidence and circumstantial evidence. Evidence is direct when the facts are shown by exhibits which are admitted into evidence, or when sworn to by witnesses who have actual knowledge of them from something that they have learned through the exercise of one of their five fundamental senses, such as sight, hearing, taste, smell and touch.

Circumstantial evidence simply means the drawing of a logical conclusion from other facts that are shown by direct evidence.

The classical example of circumstantial evidence is in Daniel DeFoe's story about Robinson Crusoe. When Crusoe saw the footprint on the sand and knew that it was not his own, the only logical conclusion to draw was that another human being was on the island.

Now, not all circumstantial evidence calls for such a compelling and absolutely certain conclusion. But I am sure that you are all familiar with the process. We use it in our daily lives. We

draw conclusions based on our common sense and experience from other connected facts and the process is no different here.

Now, it is your memory of the evidence that controls here. It is not the way I remember it and it is not the way counsel remembers it and I have no intention here of reviewing this evidence. I know that it is fresh in your mind. If your memories of the evidence squares with what the lawyers told you yesterday, as their memory of it, you may accept what they said. But if you have a different recollection of the evidence you are bound by your oath to reject what they said, and rely on your own memory.

Now, when I say your own memory, I mean your collective memory. One of you can help another to stimulate his memory; to help refresh his recollection. Sometimes jurors are only out a few minutes, and following the script that they see on TV every night, some juror sends a note and says he wants to have the testimony of witness A or witness B, sometimes four or five witnesses reread.

Now, in that connection, there is no transcript of this testimony at all. It all rests in those stenotype notes which you see Mr. Sheffer taking there, and it takes time to find it. We can do it if

it is necessary, and if any of you strongly feels and sends a note through your foreman that you want some testimony reread, we can do it. But it takes time, and before you resort to that process, please try to help stimulate and refresh each other's memory. It is your collective memory of the evidence that controls.

Now, William L. Holmes, a Special Agent of the FBI, was allowed to testify as an expert on the bookmaking or gambling business. An expert may testify and give his opinion on a subject concerning which he has some special knowledge. This is allowed on the theory that the advice of one experienced and versed in a technical or a special subject will help the jury in reaching its decision. You may consider the expert's qualifications and opinion, and weigh his reason, if any, and give his testimony such weight as you feel it deserves. An expert opinion is purely advisory and you may reject it entirely if in your judgment the reasons given are not convincing. That determination rests with you.

Now, one of your most important functions is to decide which witnesses you will believe, and this is so as to every witness, whether called by the government, whether a government agent or whether a witness called by the defense.

You are not to be influenced by the number of witnesses called, or by the length of the trial. You are concerned not with the quantity of the evidence, but with the quality of the evidence. The first test which you should apply in determining the truthworthiness of a witness is to measure what he says against your plain, everyday, common sense. You are not bound to believe unreasonable statements, or to accept testimony that defies your common sense or insults your intelligence, just because the statements are made under oath in a public courtroom.

You saw the witnesses in this case. In deciding whether to believe a witness you should consider his conduct and his manner on the stand. I saw you watching these witnesses with particular care as they were testifying. Obviously, you were sizing them up. How did the witness impress you? Was the witness being frank with you? Was his version of the evidence straightforward? Was he trying to conceal or hold back some testimony? Was he just parroting answers? Does he have any motive to testify falsely? Is he interested in any way in the outcome of this case? How strong or weak was his memory of important events? Did he forget the unforgettable?

In short, can you rely on him?

Can you trust him? Was he hostile or friendly toward either side in this case?

You ought to consider his opportunity to know the facts about which he testified and the probability or improbability of what he said in light of the totality of the circumstances here. How does his testimony add up when considered with all of the other evidence? How far does his story check out with the recordings and with documentary evidence? Are there any inconsistencies in his testimony and, if so, how important are they?

Now, if you find that any witness has deliberately and willfully lied with respect to any material fact in his testimony offered at this trial, you may follow either one of two courses: You may accept as much of the witness' testimony as you believe, or you may reject, if you wish, his entire testimony.

Now, none of the defendants took the stand and testified in this case. A defendant is not required to take the stand and testify in his own behalf. He has no burden of proof whatever to sustain in this case. Each defendant has denied the charges made against him by his plea of not guilty, and he is presumed to be innocent. The fact that he has not

testified cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against the defendant, nor should that fact even enter into your discussions or your deliberations in any way.

Now, before discussing the crimes charged here, I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge made and you are to draw no inference of guilt from the mere fact that the defendant has been indicted. An indictment simply means that the defendant has been accused of a crime and, as I told you earlier, each defendant here has denied the charges made against him by his plea of not guilty, and he has no burden of proof whatever to sustain in this case. He is under no obligation to produce any witnesses. He is presumed to be innocent, and this presumption of innocence continues throughout the trial and during the deliberations of the jury. This presumption of innocence is overcome when and only when the government establishes the guilt of a defendant beyond a reasonable doubt.

Now, what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that is based upon reason, a reason

which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary, conceivable doubt, nor a doubt based upon emotion, sympathy, or prejudice, or upon what some juror might regard as an unpleasant duty.

The government is not required to prove a defendant guilty beyond every conceivable or possible doubt, nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in human affairs.

You should review all of the evidence as you remember it. Sift out what you believe. Discuss it, analyze it; weigh and compare your view of the evidence with your fellow jurors. If that process produces a solemn belief or conviction in your mind such as you would be willing to act upon without hesitation if this were a matter of importance to yourself, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if, after going through that process, your mind is wavering or is so uncertain that you would hesitate before acting if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt, and your verdict must be not guilty.

Now, the indictment in this case contains five counts. Each of those counts charges a separate offense or crime, and each count must be considered and decided by you separately.

The indictment names six defendants, all of whom are on trial before you. They are Samuel L. Ebare, also known as "Sam;" Joseph D'Agostino, also known as "Joey;" Richard Michael Beach, also known as "Harpo;" Charles B. Grezo, also known as "Sonny;" Louis M. Camerano; and Raymond Czerwinski, also known as "Baldy."

Now, the guilt or non-guilt of each defendant must be determined by you separately as to each count in which he is named in this indictment. Although, as I will explain to you shortly, in considering a defendant's guilt or non-guilt, you may have to determine the nature of the participation, if any, of other persons, and this is particularly -- when I come to discuss Count II, and when we discuss Count I.

Now, in the determination of guilt or non-guilt, you must bear in mind that guilt is personal. There is no such thing under our system of justice as guilt by mere association. The guilt or non-guilt of the defendant on trial before you must be determined

separately with respect to him, solely on the basis of the evidence presented against him or on the lack of evidence. Let us turn to the specific charges now against these defendants, and we will first discuss Count II, because all of the remaining counts are based on the legal principles and concepts which apply to Count II.

Count II of the indictment charges each of the defendants on trial with violating a law of the United States, which makes it a crime for anyone to conduct, finance, manage, supervise, direct or own all or part of an illegal gambling business.

In order to convict the defendant whom you are considering on Count II, the government must prove the following three facts beyond a reasonable doubt:

First, that the gambling business must be in violation of the law of the State of New York.

Secondly, that it must have five or more persons involved in its conduct, and third, it must be in substantially continuous operation for more than 30 days, or have a gross revenue of $2,000 or more in a single day.

Now, the first fact which the government must prove beyond a reasonable doubt is that the

business which was being operated was an illegal gambling business. The term "an illegal gambling business" means a business which is a violation of the law of the State of New York, since there is no dispute here that the sports bookmaking operation and parlay business involved operated in the Northern District of New York and elsewhere.

Now, the New York law provides that a person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity. You will note that I have said that a defendant must knowingly advance or profit from illegal gambling activity. The indictment charges that the defendant acted unlawfully and knowingly. Knowingly does not mean that a defendant must be aware that his conduct is criminal or that it violates either state or federal law. It simply means that he must have known what he was doing, that he was acting voluntarily, deliberately and on purpose, and not because of mistake, accident, carelessness or other innocent reason.

Unlawfully or illegally simply means that the act which the defendant is doing is prohibited by law.

Now, a person advances gambling activity

when, acting other than a player, he engages in conduct which materially aids any form of gambling activity

A person profits from gambling activity when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person, whereby he participates or is to participate in the proceeds of gambling activity.

Now, a player means a person who engages in any form of gambling solely as a contestant, or bettor, without receiving or becoming entitled to receive any profit therefrom, other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity.

Thus a person who gambled at a social game of chance on equal terms with the other participants does not otherwise render material assistance to the establishment, conduct or operation thereof by performing without fee or remuneration, acts directed toward the arrangement or the facilitation of the game, such as inviting persons to play, permitting the use of the premises and supplying cards or other equipment used therein.

A person who engages in bookmaking is

not a player. Bookmaking means advancing gambling activity by unlawfully accepting bets from members of the public as a business rather than in a casual or personal fashion upon the outcome of future contingent events.

Now, the term business, as used in these laws, is to be given its ordinary normal meaning. In a sports bookmaking operation and parlay business, which accepts bets from members of the public, is an illegal gambling business prohibited by New York law.

Now, the mere fact, however, that you may find that one or more of the defendants was operating an illegal gambling business in violation of New York law is not enough to find any defendant guilty. Before you can convict any defendant of violating the federal law applicable here, you must find two other facts. One of these, the second fact which the government must prove beyond a reasonable doubt, is that the illegal gambling business involved five or more persons who conducted, financed, managed, supervised, directed or owned all or part of such business.

The word "conduct" means to carry on or to operate, or to cause to function, and refers both to high level bosses, and to street-level employees.

It includes all levels of personnel who participate in an illegal gambling business regardless of how minor their roles, and whether or not they are called writers, collectors, runners, clerks, or employees. It includes agents or middlemen who accept bets from others, and pass them along to a single, central gambling business. It includes otherwise outside bookmakers who accept bets from their own customers, and lay them off to a single central operation on a regular, ongoing, consistent and substantial basis.

It does not include anyone, including an outside or independent bookmaker who places a single, or isolated bet for his own customer, or who makes isolated and casual, rather than substantial and regular lay-off bets, or who occasionally exchanges line information with the central gambling operation.

In short, a conductor includes all persons who participate in the operation of a gambling business, including those who participate in a network composed of other bookmakers, who join in a cooperative and consistent ongoing relationship with a single central gambling enterprise, and pool their bets, either through fairly regular layoffs, or profit sharing, or consistently and continuously share line information, or systematically transfer a

BEST COPY AVAILABLE

substantial amount of business, or part of the action, or give advice concerning gambling operations.

However, the bettor, player or customer of an illegal gambling business does not conduct the illegal gambling business, even though he engages in the illegal gambling activity by placing a bet or bets, and even though he may be a regular and even a daily customer of the gambling business, and notwithstanding the fact that he may play or bet large amounts of money.

The federal law is not aimed at the bettor, at the player or the customer, but at those who conduct the illegal gambling business.

Now, "to finance" means to supply the capital or the financial backing or money to establish or operate or run the business. "Manage" means to run the business, to have charge of, to direct or to have an important voice in the direction and policies of the business. "Supervise" means to oversee or boss the operation. "Direct" means to guide or control or run. "Own" means to have ownership or title in some demonstrable way, such as a share in the profits of the business.

Now, you will notice that in stating the acts, such as conduct, supervise, finance, and so forth

which are prohibited by the statute, I have used the word "or" he must conduct, "or" supervise, "or" finance, and so on. It is not necessary, therefore, for the government to prove that the defendant whom you are considering did all of these prohibited acts. It is, in itself, enough if you find that he knowingly did any one of them. Nor is it necessary for the government to prove that five or more persons did all of the prohibited acts.

For example, it would be sufficient if the government proved, beyond a reasonable doubt, that three persons conducted the gambling business, and that two others financed it; that would give you the requisite five.

The government contends that all of the defendants now on trial, plus James V. Colloca and Leon Cook, for a total of eight persons either conducted or financed or managed, or supervised, or directed, or owned, all or part of the gambling business. And it is for you to decide whether that is the fact.

The third fact which the government must prove beyond a reasonable doubt is that the illegal gambling business was a gambling business which had been or remained in substantially continuous operation

for a period in excess of 30 days, or that it received profits of more than $2,000 in any single day.

Now, the government contends that the evidence shows that the sports bookmaking operation and parlay business involved here was in substantially continuous operation from about September 1, 1973 through June 30, 1975. "Substantially continuous operation for more than 30 days" does not mean that the business must operate every single day for at least 31 consecutive days, or that it must necessarily operate in the same physical location. Rather it means that the same illegal gambling business must operate on a regular basis, even at many different locations, for a period in excess of 30 days.

Now, you must consider all of the evidence and each defendant separately. If, as to the defendant whom you are considering, you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you the government is required to prove, then you must find that defendant not guilty on Count II.

On the other hand if, as to the defendant whom you are considering, you find that the government has proved beyond a reasonable doubt all three of the facts which I have instructed you the

government is required to prove, then you should convict that defendant on Count II.

We will now turn to Counts III, IV and V.

The law involved in these counts makes it a crime for any person to use any facility, such as a telephone in interstate commerce, with the intent to promote, manage, establish, carry on or facilitate the promotion, management, establishment or carrying on of any business enterprise involving gambling which operates in violation of state or federal law and, thereafter to perform or attempt to perform any act of promoting, managing, establishing, carrying on or facilitating the promotion, management, establishment or carrying on of the gambling enterprise.

Each of Counts III through V charges that the defendant D'Agostino and Camerano violated this law by using telephone facilities between the State of Nevada and the State of New York, to disseminate sports line information for a gambling enterprise which was operating in violation of state and federal law. These counts also charge that the defendant Grezo aided and abetted D'Agostino in committing the crime.

Specifically, Count III alleges such a telephone call between D'Agostino and Camerano on or

about January 4, 1975 at approximately 12:28 p.m.

Count IV alleges such a telephone call between those two defendants on or about January 4, 1975 at approximately 5 p.m.

And Count V alleges such a telephone call between those two defendants on or about January 5 at approximately 12:30 p.m.

Now, with respect to Counts III through V, you again must consider each count, and each defendant named in that count separately. We will first consider D'Agostino and Camerano.

In order to convict either or both of them on the count which you are considering, the government must prove the following three facts beyond a reasonable doubt:

First, that the defendant used a telephone facility to talk to someone in another state with the intent to promote or to facilitate the promotion, management, establishment or carrying on of a business enterprise involving gambling.

Now, here it is not necessary for the government to prove that the defendant had knowledge that the telephone call was from out of state or that he knew that by making or accepting the call he was violating the law.

However, with respect to the defendant's intent, it is necessary for the government to prove that the interstate facility,here, an interstate telephone facility, was in fact used and that the defendant used it, or caused it to be used, and that he intended to promote, or to facilitate the promotion, management, establishment or carrying on of the illegal gambling activity.

You will notice again that I used the word "or", in listing the prohibited acts and the prohibited intent. The government need, therefore, only prove that the defendant's intent was to do any of the things that I have listed.

Now, the government contends that the purpose of the interstate telephone calls between Nevada and New York was to disseminate line information. It is sufficient, if you find that the defendant intended the purpose of the line information was to facilitate or in any way help or further the gambling activity. It is not necessary that the government prove that the line information was absolutely essential to the operation of the gambling activity.

The second fact which the government must prove beyond a reasonable doubt as to each of Counts III through V is that the gambling enterprise was in

violation of either federal law or state law. Here, you will recall and apply my earlier instructions on those subjects in discussing Count II, that is, that in the State of New York a person is guilty of promoting gambling if he advances or profits from gambling activity and that advancing gambling activity essentially is any kind of conduct in any phase of the gambling operation, no matter how small or low level, except that of a bettor or player.

Disseminating or receiving line information for a gambling business is advancing gambling activity under this law.

You will also recall my earlier instructions as to what kind of gambling enterprise is in violation of the law of the United States, and if you find in Count II that such an illegal gambling business existed, then that finding alone will satisfy the second fact with respect to Counts III through V.

The third fact which the government must prove beyond a reasonable doubt as to each of Counts III through V is that after the alleged interstate telephone conversation, the defendant knowingly performed or attempted to perform any act of promoting or of facilitating the promotion, management, establishment or carrying on of a business enterprise

involving gambling. Here, again, you will notice that I have used the word "or". The government need only prove any single prohibited act in furtherance of the gambling enterprise in order to satisfy this third fact.

Now, in discussing Counts III through V, we have been referring only to the defendants D'Agostino and Camerano who are alleged to be the actual participants in each of the three interstate telephone calls. Under the law, D'Agostino and Camerano are called "principals" in the criminal offense.

We will now discuss the defendant Grezo, who is named as an aider and abettor in each of Counts III through V.

The government contends that Grezo aided and abetted in the offense charged in each of Counts III through V, by discussing line problems with D'Agostino and by using the line information provided to him by Camerano, through D'Agostino. The government does not have to prove that Grezo was a participant in any interstate telephone call, or that Grezo had knowledge that an interstate facility was being used.

The defendant Grezo contends that he was

simply obtaining line information in order to play the middle, and that he was a mere player. That issue is for you to decide.

The law provides that a person who aids and abets, counsels, commands, induces or procures the commission of a crime by another is just as guilty of that crime as if he committed it himself.

Accordingly, you may find the defendant Grezo guilty of the crime charged in the count which you are considering, if you find beyond a reasonable doubt that he aided and abetted D'Agostino in the commission of the crime charged in that count, and that he was acting other than as a player in seeking or using line information.

Before you can convict Grezo for aiding and abetting, you must find that the crime charged in the count which you are considering was committed by another, here D'Agostino, and that Grezo consciously associated himself with the criminal venture, with the intent that his conduct would help him succeed.

You must be convinced beyond a reasonable doubt that Grezo was knowingly and intentionally doing something to aid the crime or to forward the crime of the other person; here D'Agostino; that Grezo was a conscious, knowing participant in the crime, with a

stake in its success, rather than a mere witness, player, spectator or bystander on the scene of a crime when it was committed by another, D'Agostino.

With respect to each of Counts III through V, you must consider all of the evidence and each count and each defendant separately. As to the defendants, D'Agostino and Camerano, if you find as to the defendant whom you are considering that the government has failed to prove beyond a reasonable doubt each of three facts which I have instructed you it is required to prove, then you must acquit that defendant on that count.

On the other hand, as to the defendants D'Agostino and Camerano, if you find that the government has proved beyond a reasonable doubt all three of the facts which I have instructed you it is required to prove, then you may convict that defendant on that count.

As to the defendant Grezo, if you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you it is required to prove as to the defendant D'Agostino on the count which you are considering, or that the government has failed to prove that Grezo knowingly aided and abetted another,

D'Agostino, in the commission of the crime, then you must find Grezo not guilty on that count.

On the other hand, as to the defendant Grezo, if you find that the government has proved beyond a reasonable doubt all three of the facts which it is required to prove as to the defendant D'Agostino on the count which you are considering, and that the government has proved that Grezo knowingly aided and abetted D'Agostino in the commission of the crime, then you may convict the defendant Grezo on that count.

We will now turn to the first count of the indictment which charges a conspiracy.

Count I charges the six defendants now on trial, together and with each other and with James V. Colleca and Leon Cook, who are named as co-conspirators, and with numerous other persons whose exact identity are to the Grand Jury unknown, with conspiring to conduct, finance, manage, supervise and own all or part of an illegal gambling business.

Here, again, you must consider each defendant separately. In order to convict the defendant whom you are considering on Count I, the government must prove the following three facts beyond a reasonable doubt:

First, the existence of a conspiracy as

charged in the indictment, sometime between September 1, 1973 and June 26, 1975, in the Northern District of New York, for the purpose of committing the crime of conducting, financing, managing, supervising, directing, or owning all or part of an illegal gambling business as I have defined that crime in my discussion of Count II. Specificially, the government must prove the existence of a conspiracy which contemplated the crime of conducting an illegal gambling business which was prohibited by the law of New York, which involved or would involve five or more persons, and which was intended to continue in operation for more than 30 days, or to have a gross revenue of at least $2,000 in any single day,

Second, that the defendant whom you are considering joined the conspiracy with knowledge of its illegal purpose.

Third, that any member of the conspiracy committed at least one of the overt acts set forth in the indictment. I will now discuss what these facts mean.

The first fact which the government must prove beyond a reasonable doubts is the existence of the conspiracy. Now, what is a conspiracy? A conspiracy, for our purpose, is simply a combination

or an agreement among two or more people to violate the law as charged in this indictment. Thus, a conspiracy is a kind of a partnership in criminal purposes and it is usually secret in its origin and in its execution.

The gist of the crime is the combination or agreement among two or more people to violate the law. This does not mean that two or more persons must meet and sign some kind of an agreement, or that they must sit down and agree in so many words on what their unlawful scheme is to be, or how they are going to carry it out.

When persons enter into a combination or agreement to violate the law, only fools would put it in writing. Much is necessarily left to implicit understanding and tacit understanding. Conspirators do not proclaim their plot, or publicly announce their purpose. The very nature of a conspiracy calls for secrecy and intrigue.

The first fact is satisfied, therefore, if you find beyond a reasonable doubt that any two or more people in any way intentionally combined, or agreed to a common plan knowingly and intentionally to conduct, finance, manage, supervise, direct or own part of an illegal gambling business prohibited by

New York law involving five or more people and intended to continue for more than 30 days, or to have a gross revenue of at least $2,000 in any single day.

Now, in determining whether there was such a combination, understanding or agreement here, you should consider all of the evidence about each defendant's conduct, acts and statements. You should consider not only what was said or done, but also how it was said or done. From the point of view of the law, there is danger to the public when two or more people combine to do something that is unlawful. The danger is greater than if the lone criminal acts by himself because in numbers there is strength, and two or more people are able to accomplish crimes that are more difficult and more harmful to the public.

Because of this, a conspiracy to commit a crime is a distinct crime, in and of itself, separate and apart from the crime which it is the object of the conspiracy to accomplish. In other words, the agreement to enter into this illegal gambling business, in and of itself, is a crime, whether or not the defendants ever actually carried out their plan, whether or not they ever, in fact, entered into an illegal gambling business. Thus you may find that a conspiracy exists, even though the purpose of the

conspiracy is never accomplished.

Proof, however, of the accomplishment of the purpose of the conspiracy is probably the most persuasive evidence of the existence of the conspiracy, itself. The period of time charged in the crime here runs from September 1, 1973 through June 26, 1975.

It is not necessary for the government to prove that the conspiracy alleged started and ended on those specific dates. It is sufficient if you find that the conspiracy was formed, and that it existed for some substantial time within the period set forth in the indictment.

Now, you will recall that the second fact which the government must prove beyond a reasonable doubt is that the defendant joined the conspiracy with knowledge of its illegal purpose.

When I say "joined the conspiracy," I do not mean that a defendant has to file some kind of an application, or that he has to sit down and say, "Let me in" or anything of that nature. However, before one can be found to be a member of a conspiracy, he must know of the existence of the conspiracy, and of its unlawful purpose to conduct an illegal gambling business, as charged in this indictment and as I have defined the crime of conducting an illegal gambling

business in our discussion of Count II, and he must voluntarily and knowingly join in the plan with an intent to combine with others to violate the law, and he must knowingly promote the scheme, or have some kind of a stake in its success.

In this connection, you will recall my earlier instructions as to what constitutes knowledge, willful and intentional conduct in discussing Count II, and apply those instructions here.

Here, in determining the knowledge and intent of a defendant, it is obviously impossible to look into his mind. However, intent and knowledge may be inferred from the way a defendant acts, by his statements, and by all the surrounding circumstances. Thus, the old adage "Actions speak louder than words" applies here.

In this connection, you may not rely upon statements of one defendant to find that another defendant was a member of the conspiracy. You must determine the membership of a particular defendant solely from the evidence concerning his own actions, his own conduct, his own statements.

The mere fact that a defendant may witness a crime, or be present when a crime is committed by others, or that he may attend a meeting or unwittingly

assist the criminal venture, or have an association or friendship with a member of a conspiracy, or even though he participates in an isolated gambling transaction with a member of a conspiracy is not, in itself, enough to make him a conspirator unless you first find, beyond a reasonable doubt, that he knew of the conspiracy and that he deliberately and intentionally joined in the criminal venture with knowledge of its unlawful purpose and with a stake in its success.

Now, one may become a member of a conspiracy without knowledge of all of the details, or all of the operations of the conspiracy. One defendant may know only one other member of the conspiracy. Yet if he knowingly cooperates to further the illegal purpose of the conspiracy, with knowledge that others have joined together to violate the law, he becomes a member, although his role may be only an insignificant or minor one.

Now, if you find that a defendant did join the conspiracy with knowledge of its illegal purpose, then he is bound by what other say and do in furtherance of the objects of the conspiracy, even though he is not present, provided he is still a member. You will remember that each conspirator is the agent or partner of every other conspirator.

What one does to promote the illegal plan or illegal agreement binds every other member of the conspiracy.

Now, the third fact which the government must prove beyond a reasonable doubt is the commission by any conspirator of at least one overt act in furtherance of the objects of the conspiracy. An overt act means any act by any member of the conspiracy in an effort to accomplish some purpose of the conspiracy.

The reason the law of conspiracy requires an overt act is because a person might agree to commit a crime and then change his mind. Therefore, before a defendant can be convicted of a conspiracy, one or more of the conspirators must have taken at least one step, or performed at least one single act, toward carrying out the unlawful intent to commit the crime. That step may, in itself, be perfectly innocent.

The indictment in this case enumerates seven overt acts allegedly done in furtherance of the conspiracy in order to effect the objects of the conspiracy, and they are:

One, that on or about October 30, 1974, Samuel Ebare and James J. Colloca met in the Chartroom, in Oswego, New York, and had a discussion concerning a

debt.

Two, on or about November 5, 1974, Joseph T. D'Agostino spent approximately one and a half hours at the residence of Leon Cook at 214 Golf Road, Syracuse, New York, conducting the aforesaid illegal gambling business over Cook's telephone.

Three, on or about December 21, 1974, Joseph T. D'Agostino had a telephone conversation with Charles T. Grezo about matters relating to the operation of the aforesaid illegal gambling business in which D'Agostino accepted lay-off wagers from Grezo.

Four, on or about January 3, 1975, Joseph T. D'Agostino distributed line or odds information over the telephone to Raymond Czerwinski, and they discussed other matters relating to the operation of the aforesaid illegal gambling business.

Five, on or about January 4, 1975, Richard Michael Beach and Joseph T. D'Agostino had a telephone conversation in which they discussed the status of the aforesaid illegal gambling business concerning a particular game, and during which D'Agostino gave Beach the line, or odds information on numerous sporting events.

Six, on or about January 5, 1975, Louis M. Camerano telephoned Joseph T. D'Agostino from

Las Vegas, and Camerano gave D'Agostino line or odds information on numerous sporting events for use in the aforesaid illegal gambling business.

Seven, on or about January 6, 1975, Joseph T. D'Agostino and Samuel Ebare had a telephone conversation in which Samuel L. Ebare gave Joseph T. D'Agostino instructions with respect to the pay-off of a winning bettor in the aforesaid illegal gambling business, and they arranged a meeting.

Now, the government contends that the meetings and telephone calls referred to in these overt acts have been proved beyond a reasonable doubt from the tape recordings, and from physical surveillance by FBI agents. That, of course, is for you to decide.

You will note that the overt acts charged are innocent, in and of themselves. Nevertheless, if an overt act was performed by any member of the conspiracy during the existence of the conspiracy, and in furtherance of its unlawful purpose, then that act was sufficient to satisfy the government's burden of proving the third fact.

The government must prove to you beyond a reasonable doubt that at least one of the overt acts which I have just read to you was committed by one or more of the conspirators and that that act was done in

furtherance of the conspiracy.

Now, in this connection, the government does not have to prove that all of the defendants committed an overt act, or that all of the overt acts were committed. It is required to prove one overt act by any one member of the conspiracy.

Likewise, it is sufficient if the dates alleged in the overt acts are substantially similar within a few weeks of the dates mentioned in the testimony. The same is true as to the place mentioned in the overt acts. It must be substantially similar. There is no requirement that it be exactly as alleged in the indictment.

With respect to Count I, therefore, you must consider all of the evidence and each defendant separately. If, as to the defendant whom you are considering, you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you it is required to prove, then you must acquit that defendant on Count I.

On the other hand, if as to the defendant whom you are considering, you find that the government has proved beyond a reasonable doubt all three of the facts which I have instructed you it is required to prove, then you should convict that defendant on Count

I.

You are instructed that the question of possible punishment of a defendant in the event of a conviction is no concern of yours, and it should not enter into or influence your deliberations in any way. The duty of imposing sentence, in the event of a conviction, rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case, and determine the guilt or non-guilt of the defendant solely upon the basis of that evidence.

When you retire to the jury room, you should elect one of your number to serve as your foreman or forelady, and to address whatever communications, or to announce your verdict to the Court.

Treat one another with consideration and respect, as I know that you will. If differences of opinion arise, your discussions should be dignified, calm and intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case, as you collectively remember it, and the law as I have given it to you in this charge.

You are each entitled to your own opinion. No juror should acquiesce in a verdict

against his individual judgment. Nevertheless, I would point out that no one should enter the jury room with such pride of opinion that he would refuse to change his or her mind, no matter how convincing or how persuasive, or how intelligent the argument of another juror or jurors.

Discussion and deliberation lie at the very heart of our American Jury process, and your deliberations should be approached in that spirit. Talk out your differences. Each of you should, in effect, decide the case for himself or herself, after thoroughly reviewing the evidence, and frankly discussing it with your fellow jurors, with an open mind, and with a desire to reach a verdict. If you do that, you will be acting in the true democratic process of the American Jury system.

There are 12 of you on this jury. The alternate jurors will be excused before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you as to each defendant and each count in which that defendant is named, and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury to decide the

issues submitted to you fairly and impartially, and without fear or favor.

And to guide you in your deliberations, I will send in a copy of the indictment.

Now, I submit the case to you with every confidence that you will fully measure up to your oath.

Now, members of the jury, if you find that the government has failed to establish the guilt of any defendant beyond a reasonable doubt, you should find that defendant not guilty.

If you find that a defendant has not violated the law, you should not hesitate, for any reason, to render a verdict of not guilty as to him.

But on the other hand, if you find that the government has established the guilt of a defendant beyond a reasonable doubt, you should not hesitate, because of sympathy or any other reason, to render a verdict of guilty.

Your foreman or forelady then will return a verdict, an oral verdict in open court of either guilty or non-guilty as to each defendant on each count in which that defendant is named.

Are there any exceptions, gentlemen? If so, I will hear you at the bench.

MR. FISHER: Your Honor, could we

approach the bench for a moment, please?

(Whereupon the following took place at the side bar, out of the hearing of the jury.)

MR. FISHER: Your Honor, I do not have any exceptions but on Count II, when the count was explained as to the 30 days or $2,000, you hesitated there, and you used the word "profit," and you said, "$2,000 profit" and I would ask the Court to clarify that as to revenue and it would be $2,000 gross revenue.

THE COURT: Thank you.

(Whereupon the following took place before the Court and the jury.)

THE COURT: In discussing Count II I said that the government must prove that the business was in continuous operation for more than 30 days, and then I said, "or had a profit of $2,000." I am in error. It is a gross revenues of $2,000, in any single day.

All right, swear the marshals.

(Whereupon the marshals were sworn by the Clerk.)

THE CLERK: The alternate jurors are now excused from further consideration of this case.

THE COURT: The jury will now retire.